UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY, *et al.*, *Plaintiffs*, v. KIRSTJEN M. NIELSEN, *et al.*, *Defendants*.	Civil Action No. 1:18-00655 (KBJ)

DEFENDANTS' SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR CROSS-MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

The Secretary of the U.S. Department of Homeland Security ("DHS"), exercising discretion expressly assigned to her alone by Congress, waived a variety of legal requirements for three sets of border infrastructure projects in New Mexico and Texas. The Secretary relied both on the general mandate set out in § 102(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the specific call in § 102(b)(1) for additional infrastructure needed to gain operational control of the southwest border. Plaintiffs argue that reliance on either of these authorities is ultra vires, and alternatively that if IIRIRA authorizes these waivers it is unconstitutional. Most of these issues have previously been exhaustively briefed. DHS accordingly sets forth herein those facts relevant to the newly consolidated claims and addresses the arguments raised for the first time in Plaintiffs' supplemental brief to show that: (1) the Court lacks jurisdiction over all of Plaintiffs' non-constitutional claims, (2) the Secretary's acts are well within her statutory authority, and (3) each of Plaintiffs' constitutional claims is meritless.

BACKGROUND

The two additional waiver determinations Plaintiffs challenge are similar to waiver determination published on January 22, 2018. *See* Defs.' Opp'n to Pls.' Mot. Summ. J. and Mem. in Supp. Defs.' Mot. to Dismiss or Alternatively Cross-Mot. for Summ. J. ("Defs.' Mem.") at 4-6, ECF No. 21-1. On October 10, 2018, a waiver was published regarding the construction of gates to fill eleven gaps in levee walls in Cameron County, Texas. *See* 83 Fed. Reg. 50949-50 (Oct. 10, 2018). On October 11, 2018, a waiver was published regarding approximately 18 miles of additional barriers and roads in Hidalgo County, Texas. *See* 83 Fed. Reg. 51472-73 (Oct. 11, 2018). Both projects involve the Rio Grande Valley Sector; the Cameron County project is within the scope of the work originally intended to be completed pursuant to an April 2008 waiver determination. *See* 73 Fed. Reg. 19078 (Apr. 8, 2008); Ex. 1, Second Declaration of Paul Enriquez

("2d Enriquez Decl.") ¶¶ 8, 32-33. In support of her determinations, the Secretary made three factual determinations:

- that each project area "is an area of high illegal entry,"
- that there is "presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States the project area," and
- that exercise of waiver authority under the IIRIRA was necessary "to ensure the expeditious construction of the barriers and roads in the project area."

83 Fed. Reg. at 51473; 83 Fed. Reg. at 50950. Accordingly, the Secretary announced the waiver of certain laws "with respect to the construction of roads and physical barriers . . . in the Project Area." 83 Fed. Reg. at 51473; 83 Fed. Reg. at 50950.

The projects are funded by 2017 and 2018 appropriations. *See* 2d Enriquez Decl. ¶¶ 13-14; Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Division F, Title II, § 230, 132 Stat. 348, 616 (Mar. 23, 2018); Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, Div. F, Title VI, 131 Stat. 135, 434 (May 5, 2017). Construction started on the Cameron County project in November 2018. 2d Enriquez Decl. ¶ 11. The projects to be conducted in Hidalgo County are scheduled to begin construction in March 2019. *Id.* ¶ 14. Significant consultation with relevant stakeholders occurred prior to the waiver determinations and the beginning of construction, and remains ongoing. *See id.* ¶¶ 15-38. Indeed, for the Cameron County project, consultation has spanned an eleven year period. *See id.* ¶¶ 32-33.

Two additional lawsuits involve the same waiver determinations. On December 7, 2018, Sierra Club and the Southern Border Communities Coalition filed suit to challenge both of the waivers published on October 10 and 11, 2018, on ultra vires, Administrative Procedure Act (APA), and constitutional grounds. *See* Compl., ECF No. 1, *Sierra Club v. Nielsen*, No. 1:18-cv-02877 (D.D.C.). Defendants' response to that complaint is currently due March 8, 2019. A separate suit by the North American Butterfly Association challenged anticipated construction of

barriers and gates on the property of National Butterfly Center along the international border. *See* Am. Compl., ECF No. 19, *N. Am. Butterfly Ass'n v. Nielsen*, No. 1:17-cv-02651 (D.D.C. Mar. 28, 2018). Yesterday, Judge Leon dismissed that case, in part on the basis of the October 10, 2018 waiver determination. *See N. Am. Butterfly Ass'n v. Nielsen*, No. 1:17-cv-02651, 2019 WL 634596 (D.D.C. Feb. 14, 2019).

ARGUMENT

I. PLAINTIFFS' *ULTRA VIRES* CLAIMS FAIL

A. The Court Lacks Jurisdiction to Review These Non-Constitutional Claims

Defendants have shown that Congress explicitly barred all non-constitutional review, including ultra vires review, of claims arising from the Secretary's exercise of her waiver authority under § 102(c)(1). *See* Defs.' Mem. at 7-14; Defs.' Reply in Supp. Cross-Mot. Summ. J. ("Defs.' Reply") at 1-11, ECF No. 27. Plaintiffs argue that the Court should conduct ultra vires review of whether the challenged projects come within the scope of § 102(a) and 102(b)(1). *See* Pls.' Suppl. Br. at 19, ECF No. 31. The Ninth Circuit recently agreed that § 102(c)(2) prohibits some types of ultra vires review. *See In re Border Infrastructure Envtl. Litig.*, _ F.3d _, 2019 WL 509813, at *15 (9th Cir. Feb. 11, 2019) (concluding that "*ultra vires* claims alleg[ing] the waivers themselves were not authorized by the Secretary's authority under section 102(c)(1) . . . . do 'arise from' the Secretary's waiver determination, so the district court correctly found that the jurisdictional bar applies"); *see also id.* at *5 n.7 (concluding that the "extremely narrow" exception laid out in *Leedom v. Kyne*, 358 U.S. 184 (1958) does not create jurisdiction because "it is far from clear that section 102(c)(1) does not authorize the waivers").[1]

[1] In *North American Butterfly Association*, Judge Leon rejected DHS's jurisdictional argument and conducted ultra vires review on the ground that "it is well established in our Circuit that 'even where a statute precludes judicial review, "judicial review is available when an agency acts ultra vires."' *Sky Television, LLC v. FCC*, 589 Fed.Appx. 541, 543 (D.C. Cir. 2014) (quoting *Aid Ass'n for Lutherans v. U.S. Postal Serv.*, 321 F.3d 1166, 1173 (D.C. Cir.

Plaintiffs and the Ninth Circuit err in suggesting that a challenge to determinations the Secretary made *in the published waiver determination itself* somehow do not "aris[e] from any action undertaken, or any decision made, by the Secretary of Homeland Security pursuant to paragraph (1)." IIRIRA § 102(c)(2)(A). The Ninth Circuit elides key text by converting the jurisdictional question into an inquiry whether "a claim arises from the waiver provision." 2019 WL 509813, at *15. This approach fails to give significance to each term in the clause. *See Watervale Marine Co., Ltd. v. DHS*, 55 F. Supp. 3d 124, 145 (D.D.C. 2014) (noting "one of the most basic interpretive canons" that "a statute [must] be construed so that no provision is rendered inoperative or superfluous, void or insignificant"). The claims merely need to arise from the Secretary's "action[s]" and "decision[s]" not from the provision itself. Because each of Plaintiffs' claims is a challenge to the published waiver determination, and that published determination was made based on § 102(c)(1)'s requirements, *see* IIRIRA § 102(c)(1) (requiring that the determination "be[] published in the Federal Register"), Plaintiffs' claims plainly come within the scope of §102(c)'s jurisdictional restrictions. Indeed, there can be no doubt that Plaintiffs are challenging the Secretary's interpretation of § 102(a) *only because* it is the basis for a waiver.[2]

2003))." *N. Am. Butterfly Ass'n*, 2019 WL 634596, at *5. This Court should not adopt Judge Leon's conclusion because *Aid Ass'n for Lutherans* must be understood to state the rebuttable presumption that judicial review is available, rather than an absolute standard. *See* Defs.' Br. at 8 n.5; Defs.' Reply at 3 & n.4. Indeed, Judge Leon acknowledged that even "federal question jurisdiction [is] 'subject . . . to preclusion of review statutes created or retained by Congress,'" *N. Am. Butterfly Ass'n*, 2019 WL 634596, at *4 (quoting *Robbins v. Reagan*, 780 F.2d 37, 42 (D.C. Cir. 1985)), so what would provide the jurisdiction for such free-standing review authority? By contrast to the very limited opportunity to address this jurisdictional question in that case, *see* Defs.' Reply at 6-9, ECF No. 36, *N. Am. Butterfly Ass'n v. Nielsen*, No. 1:17-02561 (D.D.C. Dec. 3, 2018) (addressing ultra vires jurisdiction for the first time because the plaintiff raised it in opposition to DHS's supplemental motion to dismiss), the Court here has the benefit of full briefing on the issue and oral argument. DHS has shown in great detail that the presumptive availability of judicial review for ultra vires claims has been overcome by Congress' clearly stated intention to bar all non-constitutional review. *See* Defs.' Br. at 7-14; Defs.' Reply at 1-11.

[2] Moreover, findings that a project satisfies relevant requirements of § 102(a) and, if applicable, § 102(b) are an integral part of the § 102(c) determination. *See* IIRIRA § 102(c)(1) (granting waiver authority for "barriers and roads under this section"). For that reason, Plaintiffs and the Ninth Circuit err in attempting to partition challenges to certain of those findings. *See* 2019 WL 509813, at *15 (subjecting challenges to the scope of § 102(a) and (b) to ordinary APA review on the notion that such claims have "[t]heir origin [in] the initial decision to build the border barrier projects,

And even if "any decision made," § 102(c)(2)(A), could refer narrowly to the "decision" to "waive . . . legal requirements" in § 102(c)(1), there is no textual reason to construe "any action undertaken" to be entirely redundant. Because Congress is presumed not to include superfluous language, and because the other express reference to taking "action" comes in § 102(a) (calling for the "Secretary . . . [to] take such actions as may be necessary to install additional physical barriers and roads"), this jurisdictional provision reasonably encompasses the construction activity the Secretary undertakes pursuant to the waiver determination. The consequences of Plaintiffs' and the Ninth Circuit's approach would seriously undermine Congress' intent to avoid litigation delays. *See, e.g.*, H.R. Rep. No. 109-72 at 172 (May 3, 2005) (Conf. Rep.), ECF No. 21-3 (stating "the Conferees' intent . . . to ensure that judicial review of actions or decisions of the Secretary not delay the expeditious construction of border security infrastructure, thereby defeating the purpose of the Secretary's waiver"). Motivated plaintiffs are likely to craft a variety of APA challenges to each project for which a waiver determination is made—whether it is an area of high illegal entry, whether it adequately deters illegal crossings, whether each aspect of the construction constitutes "additional barriers and roads," etc. *See, e.g.*, *In re Border Infrastructure Envtl. Litig.*, 2019 WL 509813, at *15 (addressing such arguments under the APA standard). If the jurisdictional bar does not apply, such claims could proceed on entirely different timetables, being initiated long after the 60-day window Congress provided for § 102(c)(1) challenges, and being delayed by appeals winding their way through the circuit courts instead of proceeding straight to the Supreme Court.

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not the later decision to issue a waiver related to those projects"). Here, there is no evidence in the record indicating that a decision to construct these specific projects was prior to or separate from, the decision to issue a waiver. Instead, the publication of the waiver determinations constitute the final agency actions that are the sole basis for the lawsuits. *See* Compl. ¶ 1, ECF No. 1 (Mar. 22, 2018) ("In this action, Plaintiffs . . . *challenge the issuance of a waiver* on January 22, 2018 . . . that purports to exempt [specified] construction . . . from compliance with . . . numerous [] statutory requirements.") (emphasis added); Compl. ¶ 1, *Ctr. for Biological Diversity v. Nielsen*, No. 1:18-cv-02396, ECF No. 1 (Oct. 18, 2018) (now consolidated with this action) ("In this action, Plaintiffs . . . *challenge the issuance of waivers* on October 10, 2018 and October 11, 2018 . . . that purport to exempt [specified construction] . . . from compliance with . . . numerous [] statutory requirements.") (emphasis added).

Continued bifurcation of litigation regarding waiver determinations would impermissibly violate Congress' express jurisdictional limitations and its plainly-stated intent. *Cf. Bd. of Governors of Fed. Reserve Sys. v. MCorp Fin. Inc.*, 502 U.S. 32, 44 (1991) ("[T]he statute provides us with clear and convincing evidence that Congress intended to deny the District Court jurisdiction to review and enjoin the . . . administrative proceedings."); *NLRB v. United Food & Commercial Workers Union*, 484 U.S. 112, 130-133 (1988) (holding judicial review not permitted where review "would involve lengthy judicial proceedings in precisely the area where Congress was convinced that speed of resolution is most necessary"); *FCC v. ITT World Commc'ns, Inc.*, 466 U.S. 462, 468 (1984) (refusing to permit "[l]itigants . . . [to] evade these [exclusive jurisdiction] provisions by requesting the District Court to enjoin action that is the outcome of the agency's order" where review of order itself was prohibited).

B. The Challenged Infrastructure Projects Are Permissible Exercises of Authority Under Both 102(a) and 102(b)(1)

DHS has consistently argued that the general mandate in § 102(a) to "take such actions as may be necessary to install additional physical barriers and roads . . . to deter illegal crossings in areas of high illegal entry" grants the Secretary authority to select construction projects that meet the statutory criteria. *See* Defs.' Mem. at 16-25; Defs.' Reply at 12-17. A court is this district adopted this reading. *See Save Our Heritage Org. v. Gonzalez*, 533 F. Supp. 2d 58, 61 (D.D.C. 2008) (rejecting the notion that "the 2006 amendment to section 102(b) . . . narrow[ed] the Secretary's authority [under § 102(a)]").[3] And the Ninth Circuit recently agreed that this is the most plausible interpretation of § 102. *See In re Border Infrastructure Environmental Litig.*, 2019

[3] Plaintiffs ask the Court to disregard Judge Lamberth's reasoning in *Save Our Heritage* that § 102(a) provided independent authority and to instead distinguish that decision on the ground that the waiver challenged in that case had been issued before Congress amended § 102(b) to remove reference to the San Diego project. *See* Pls.' Suppl. Br. at 7 n.6. But Judge Lamberth did not rely on the reasoning Plaintiffs supply; the court relied on a straightforward textual interpretation. *See* 533 F. Supp. 2d at 61 (relying exclusively on "[t]he statute's explicit language").

WL 509813, at *8-9 ("[S]ection 102(a) is most plausibly read as a broad grant of authority to build border infrastructure, while section 102(b) merely denotes certain priority projects Congress intended DHS to complete first.").[4] For all of the reasons set forth in prior briefing, *see* Defs.' Mem. at 16-25; Defs.' Reply at 12-17, the Court should uphold the Secretary's actions as permissible exercises of § 102(a) authority.

DHS has also relied on the current version of § 102(b)(1) for its recent waiver determinations. *See, e.g.*, 83 Fed. Reg. 3012 (Jan. 22, 2018) (describing among the relevant statutory authority the fact that "[i]n section 102(b) of IIRIRA, Congress has called for the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border"); *see also* Appendix A (compiling relevant language for all § 102 waiver determinations). For the reasons set forth below, this provides an alternative ground for upholding the Secretary's actions as permissible exercises of § 102(b) authority.

1. The Text of Section 102(b) Encompasses These Projects

Since December 2007, § 102(b)(1) has stated:

> In carrying out subsection (a), the Secretary of Homeland Security shall construct reinforced fencing along not less than 700 miles of the southwest border where fencing would be most practical and effective and provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border.

IIRIRA § 102(b)(1). This provision established an aggregate minimum threshold for construction along the southwest border. *See* Defs.' Reply at 13. By its plain text, this provision also more generally calls for the additional infrastructure construction needed "to gain operational control of the southwest border." IIRIRA § 102(b)(1); *see also id.* § 102(b)(1)(D) (providing flexibility for the Secretary to determine that "the use or placement of such [infrastructure] resources is not the

[4] The Ninth Circuit's decision resolved consolidated claims brought by three of the Plaintiffs here—Center for Biological Diversity, Defenders of Wildlife, and Animal Legal Defense Fund—along with other plaintiffs, including the Sierra Club, the California Coastal Commission, and the State of California. *See* 2019 WL 509813, at *1.

most appropriate means to achieve and maintain operational control over the international border at [a specific] location"). In this way, Congress called for DHS to use the tools available under § 102 to implement for the southwest border Congress' direction that DHS "achieve and maintain operational control of the international land . . . borders of the United States." *See* Secure Fence Act of 2006, Pub. L. No. 109-367, § 2(a), 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. § 1701 note).[5]

Contrary to Plaintiffs' arguments, § 102(b)(1) cannot reasonably be limited to a single 700-mile project. *See* Pls.' Suppl. Br. at 12-14. Plaintiffs advance no arguments based on statutory text, instead relying exclusively on selective excerpts from the legislative history. But the statutory text is not ambiguous, making recourse to legislative history unnecessary. *See Public Citizen, Inc. v. Rubber Mfrs. Ass'n*, 533 F.3d 810, 816 (D.C. Cir. 2008) ("[Courts] must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete." (quoting *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-254 (1992))). The provision for construction of "reinforced fencing along *not less than* 700 miles of the southwest border," coupled with the call to "provide for the installation of additional [infrastructure] . . . to *gain operational control* of the southwest border," § 102(b)(1) (emphasis added), unambiguously gives DHS authority to continue constructing the border infrastructure necessary for operational control. *Cf. United States v. Arizona*, No. 10-1413, 2011 WL 13137062, at *8 (D. Ariz. Oct. 21, 2011) (concluding that, for § 102(b)(1), "no deadline mandates completion of the fencing and infrastructure developments or any required discrete action by a specific time"). Given the

[5] "Operational control" means "prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband." *Id.* § 2(b).

dynamic nature of migration patterns and illegal entries,[6] Congress did not anticipate or require operational control to be maintained exclusively on the basis of locations selected in 2008. *See, e.g.*, Pub. L. No. 109-367, § 2(c) (requiring annual reports on "the progress made toward achieving and maintaining operational control over the entire international land and maritime borders of the United States in accordance with this section").

Here, these projects are along the southwest border, involve additional barriers and other infrastructure called for by Congress, and are being conducted to gain further operational control of the border. *See* 83 Fed. Reg. 51472 (Oct. 11, 2018); 83 Fed. Reg. 50949 (Oct. 10, 2018); 83 Fed. Reg. 3012 (Jan. 22, 2018). The projects thus come within the plain meaning of the statutory text, and DHS's reliance on this provision is not ultra vires. Accordingly, Plaintiffs' ultra vires claims must fail. *See* Pls.' Suppl. Br. at 19 (admitting that if § 102(b)(1) is not limited by non-textual factors, "they cannot prevail on their ultra vires claims").

2. The Legislative History of the 2007 Amendments Does Not Support Plaintiffs' Interpretation

Moreover, to the extent legislative history is relevant, it does not support Plaintiffs' conclusion that Congress intended to authorize only "a limited and specific scope of mileage." Pls.' Suppl. Br. at 14. Plaintiffs' approach to the legislative history depends on their assumption that § 102(b)(1) identifies the totality of what DHS is permitted to construct under § 102. Viewed through the lens that Congress uses § 102(b)(1) primarily to set minimum requirements, none of the discussion in the legislative history undermines the plain import of the statutory text.

The language that ultimately became the current version of § 102(b)(1) originated in an amendment that was not adopted by the Senate or Congress as a whole. Amendment 2412 would

[6] *See, e.g.*, DHS Annual Performance Review 2017-2019 at 14 (Feb. 8, 2018) (link) ("The U.S. border . . . . is a dynamic environment where the means and tactics used by transnational criminal organizations and others to illegally cross and transport people, drugs, and illegal items is always shifting.").

have required the President to ensure that "[n]ot less than two years after the date of the enactment of this Act" DHS must "establish and demonstrate operational control of 100 percent of the international land border between the United States and Mexico" and install "at least—(i) 300 miles of vehicle barriers; (ii) 700 linear miles of fencing as required by the Secure Fence Act of 2006 (Public Law 109-367), as amended by this Act." *See* 153 Cong. Rec. S9948 (daily ed. July 25, 2007).[7] It also would have amended § 102(b)(1) to require construction of "fencing along not less than 700 miles of the southwest border," as that provision now provides. *See id.* S9949. The entire Senate debate on July 25 and 26, 2007, upon which Plaintiffs rely, occurred in the context of this language.[8] This amendment's reference to "at least . . . 700 linear miles" parallel's § 102(b)(1)'s requirement of "fencing along not less than 700 miles" and both plainly establish minimum requirements, not maximums. Moreover, both provisions call for DHS to do more than this minimum, including whatever is required to "establish" or "gain" "operational control." *See id.* at S9948-49. Thus, the individual senators' reference to "700 miles" should, at most, be seen as shorthand for this dual instruction rather than an implicit narrowing of it.[9] *Cf. id.* S10063 (daily ed., July 26, 2007) (Sen. Sessions) (speaking of "fund[ing] 700 miles at the border" as "really

[7] Relevant excerpts of the Congressional Record from July 25, 2007 (spanning pages S9871-9981) are attached as Exhibit 2, which excerpts from July 26, 2007 (spanning pages S10059-10103) are attached as Exhibit 3.

[8] Plaintiffs cite and attach an excerpt from Amendment No. 2412, Pls.' Suppl. Br. at 14 n.13, which was ruled improper and did not proceed. *See* 153 Cong. Rec. S9896. A similar amendment, including the same language quoted above but without changes to § 102(b), was reintroduced as Amendment No. 2480, which did pass the Senate, *see id.* S10059, S10061, but was not included in the consolidated appropriations act. *See* Pls.' Suppl. Br. at 14 n.13 (acknowledging that two year requirement was not included in consolidated appropriations bill or ultimately enacted). The amendment to § 102(b)(1) was separated out and adopted as Amendment No. 2466, and was later carried over into the consolidated appropriations act. *See* 153 Cong. Rec. S9981 (introduced); id. S10102-03 (adopted by unanimous consent).

[9] Indeed, Plaintiffs' citations do not directly refer to § 102(b)(1) at all. Instead, they primarily refer to proposed appropriations for the "700 linear miles" specified in the un-adopted amendments. *See* 153 Cong. Rec. S9871 (daily ed., Jul. 25, 2007) (Sen. Graham) (stating that the "goal of this amendment [No. 2412] is to provide complete operational control of the U.S.-Mexican border. It will allow us to *appropriate* . . . 300 miles of vehicle barriers, 700 miles of border fencing[.]" (emphasis added)); *id.* at S9890 (Sen. Sessions) (describing his own separate amendment, No. 2452 as "fully fund[ing] the 700 linear miles of border fencing required" by the Secure Fence Act); *id.* at S9977 (text of Sen. Sessions' amendment No. 2452); 153 Cong. Rec. S10059 (daily ed., Jul. 26, 2007) (Sen. Graham) ("[T]his [amendment No. 2480] would actually completely fund 700 miles of fencing."); *id.* S10063 (Sen. Pryor) (stating that "voting for this amendment [No. 2480] "would add 300 miles of vehicle barriers, 700 miles of fence").

progress . . . but . . . not the final installment" because "[w]e are going to have to do more in the years to come"). Regardless, one cannot give significant weight to the proposals of individual senators where Congress did not adopt those proposals wholesale. *See Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 118 (1980) (stating that "ordinarily even the contemporaneous remarks of a single legislator who sponsors a bill are not controlling in analyzing legislative history" and concluding that statement by representative who "authored another bill . . . that contained much less restrictive . . . requirements than those ultimately adopted" does not "provide[] a reliable indication as to congressional intention"); *Johnson v. Quander*, 370 F. Supp. 2d 79, 97 (D.D.C. 2005) (giving "little weight" to statement of legislator speaking in favor of amendment was ultimately not adopted).

In sum, the legislative history is consistent with DHS's interpretation of the plain text of § 102(b)(1), and any latent ambiguity from that history is inadequate to alter the plain meaning of the text. *See Milner v. U.S. Dep't of Navy*, 562 U.S. 562, 574 (2011) ("Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it."); *Ardestani v. INS*, 502 U.S. 129, 135-36 (1991) ("The strong presumption that the plain language of the statute expresses congressional intent is rebutted only in rare and exceptional circumstances when a contrary legislative intent is clearly expressed." (quotation marks and citation omitted)); *AFL-CIO, Local 3669 v. Shinseki*, 709 F.3d 29, 35 (D.C. Cir. 2013) ("Legislative history cannot create ambiguity in a clear statutory text.").

3. The DHS Secretary Invoked Both Sections 102(a) and (b) in These Waiver Determinations

Plaintiffs err in claiming that "DHS in fact did not invoke §102(b) in the Waiver notice." Pls.' Suppl. Br. at 2, 15-16. They claim that because the Secretary referenced § 102(b) in her discussion of relevant statutory authorities but not under the "Determination and Waiver" heading,

the waivers were not "issued under the authority of § 102(b)." *Id.* at 16. To the contrary, each aspect of § 102 referenced by the Secretary was directly relevant to her action, and her discussion tied § 102(a) and 102(b) together with § 102(c) at the conclusion of the introductory paragraph by stating that § 102(c) encompasses construction of all "barriers and roads authorized by section 102 of IIRIRA":

> Congress has provided the Secretary of Homeland Security with a number of authorities necessary to carry out DHS's border security mission. One of these authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA''). Public Law 104–208, Div. C, 110 Stat. 3009–546, 3009–554 (Sept. 30, 1996) (8 U.S.C 1103 note), as amended . . . . *In section 102(a) of IIRIRA*, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. *In section 102(b) of IIRIRA*, Congress has called for the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, *in section 102(c) of IIRIRA*, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of *barriers and roads authorized by section 102 of IIRIRA*.

83 Fed. Reg. at 3012 (emphasis added).[10] Thus, the Secretary's reliance on her § 102(c) authority throughout the "Determination and Waiver" section of the notice implicitly incorporates these very aspects of § 102(a) & (b). *See id.* at 3013 ("I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of the IIRIRA as amended." "Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive . . . ."). Moreover, because the Secretary did not repeat a reference to either § 102(a) or § 102(b) in the "Determination and Waiver" section of the notice, it is not clear why Plaintiffs maintain that she clearly incorporated one but not the other.

Since Plaintiffs make much of the phrasing used in prior waiver determinations, *see* Pls.' Suppl. Br. at 16, those determinations' language referring to § 102(a) and (b) have been compiled

[10] The same passage appears in both of the October 2018 determination, except for stating that Congress "mandated" the installation of the infrastructure in § 102(b) rather than "called for" it. *See* 83 Fed. Reg. at 51472; *id.* at 50949.

in a chart for the Court's convenience. *See* Appendix A, below. In brief:

- Only the 2005 determination relied explicitly and exclusively on § 102(b) in the determination and waiver sections of the notice. *See* 70 Fed. Reg. 55622 (Sept. 22, 2005).

- The January 2007 waiver referred to construction "prescribed in sections 102(a) and 102(b) of the IIRIRA." 72 Fed. Reg. 2535 (Jan. 19, 2007).

- The October 2007 waiver, by contrast, never mentioned § 102(b) in the notice at all, merely describing § 102(a) and stating that the construction at issue involved "the barriers and roads that Congress prescribed in the IIRIA." *See* 72 Fed. Reg. 60870 (Oct. 26, 2007).

- The two April 2008 waivers set forth the authority contained in § 102(a) and 102(b) and then stated that the construction at issue involved "barriers and roads that Congress prescribed in the IIRIRA." *See* 73 Fed. Reg. 10977, 10978 (Apr. 8, 2008).

It is readily apparent from these determinations that DHS has consistently viewed both § 102(a) and 102(b) as bases for authority.[11] It is also apparent that the Secretary did not need to expressly cite § 102(a) or (b) in the "Determination and Waiver" section in order to rely on those authorities—no waiver since January 2007 has expressly cited either provision in that section of the notice. Thus, DHS's changing phraseology over the years does not undermine the straightforward conclusion that the Secretary relied on both § 102(a) and 102(b) here.

Finally, Plaintiffs also err in claiming that DHS has "consistently stated that § 102(b) is a Congressional mandate to address 700 miles of border construction" and nothing more. Pls.' Suppl. Br. at 14. It is undisputed that § 102(b)(1) *contains* a mandate to complete 700 miles of barriers (subject to the discretion contained in § 102(b)(1)(D)). But Plaintiffs identify no instance in which DHS has taken the position that the authority conferred by § 102(b)(1) is limited to that

[11] Indeed, there is no reason to read "barriers and roads that Congress prescribed in the IIRIRA" (as used in the Oct. 2007 and Apr. 2008 waivers) to have a different meaning than barriers and roads "prescribed in sections 102(a) and 102(b) of the IIRIRA" (as used in the Jan. 2007 waiver). Thus, Plaintiffs err in claiming that "prescribed" by Congress refers only to § 102(b). *See* Pls.' Suppl. Br. at 16 n.17.

mileage or to the time available to employ it. The three instances Plaintiffs cite—Secretary Napolitano's 2009 response to a congressional committee,[12] CBP's 2017 response to a GAO investigation,[13] and DHS's 2011 litigation filings in Arizona,[14] *see* Pls.' Suppl. Br. at 14-15—amount to nothing more than cross-references to the mandate contained in § 102(b)(1). None of these statements affirmatively narrowed the scope of § 102(b)(1) or disclaimed the import of the plain text.[15] Because § 102(b)(1) incorporates Congress' call for achieving operational control of

[12] Secretary Napolitano stated: "Section 102 . . . requires DHS to construct—in the most expeditious manner possible—the infrastructure necessary to deter and prevent illegal entry on our southwest border, including pedestrian and vehicle fencing, roads, and technology. As amended, the Act mandates the completion of 700 total miles of fence." DHS: The Path Forward, Hearing Before the House Committee on Homeland Security, Serial No. 111-1, 11th Cong 1st Sess. (2009), Written Responses by DHS Secretary Napolitano to Questions by House Homeland Security Committee, at 65 (excerpt attached as Pls.' Ex. E).

[13] The GAO report states "With 654 miles of primary fencing currently deployed, CBP officials have stated that CBP is in compliance with its legal requirements for the construction of southwest border fencing based on the substantial discretion provided to the Secretary of Homeland Security to determine the appropriate placement of fencing." U.S. Government Accountability Office, Report No. 17-331, Southwest Border Security: Additional Actions Needed to Better Assess Fencing's Contributions to Operations and Provide Guidance for Identifying Capability Gaps at 8 (Feb. 2017) (attached by Plaintiffs at ECF No. 16-25).

[14] In 2011, DHS sought dismissal of Arizona's mandamus claim that DHS should be required to do more to complete "at least 700 miles" of border barrier and to achieve operational control of the border. *See* Counterdefendants' Mot. to Dismiss Counterclaims, *United States v. Arizona*, No. 10-1413 (D. Ariz. Apr. 12, 2011). In that filing, DHS stated:

> Through both the Secure Fence Act and IIRIA § 102, DHS has been tasked with multiple mandates and objectives, such as taking all actions deemed necessary to achieve and maintain operational control over the border . . . , *see* Pub. L. No. 109-367, § 2, constructing fencing along the southwest border, *see* IIRIRA § 102(b); installing additional physical barriers, roads, lighting, and cameras along the southwest border, *id.* . . . .

Id. at 23-24. Thus, while Plaintiffs here may zero in on shorthand used in the brief, such as characterizing § 102(b)(1) as "identif[ying] as a target the construction of 700 miles of reinforced fencing along the southwest border," *id.* at 3, or arguing that the statute lacks "manageable standards to compel the Secretary to take any specific action relating to the completion of the 700 mile fence or installation of any additional infrastructure along the Arizona border," id. at 25, those statements do not amount to Plaintiffs' narrow construction of § 102(b)(1).

[15] Nor has DHS stated at any point in this litigation that § 102(b)(1) *could not* be a basis for the Secretary's exercise of § 102(c) authority for the projects at issue in this litigation. DHS's interpretation of the scope of § 102(b)(1) is unchanged. *Cf.* Defs.' Mem. at 17 (stating that "§ 102(b) identifies particular congressional priorities to be pursued"); Defs.' Reply at 13 ("Defendants have shown . . . that § 102(b) identifies certain Congressional priorities that, at a minimum, DHS must complete 'in carrying out' § 102(a)'s mandate."). Concededly, undersigned counsel erred both in stating in DHS's opening brief that "DHS does not ground its waiver determination in § 102(b)," Defs.' Mem. at 20 n.14, ECF No. 21-1, and at the summary judgment hearing in affirmatively answering that DHS "views itself as proceeding under 102(a)." Dec. 18, 2018 Hr'g Tr. at 44:4-10. However, triggered by the Court's questions and upon review of the relevant waiver determinations, undersigned counsel corrected the error at the hearing. *See id.* at 78:1-8. Plaintiffs have not claimed prejudice from counsel's error, and any prejudice was remedied by the additional briefing opportunity the Court provided.

the border, it is *more relevant* that DHS has repeatedly asserted that this ongoing goal has not yet been achieved. *See, e.g.*, DHS Annual Performance Report FY 2017-2019 at 14 (Feb. 8, 2018) (link) (explaining that DHS is implementing new methods to "advance our ability to gain and maintain operational control of, and ultimately secure, the border").[16] Section 102(b)(1), by its plain text, remains available while DHS seeks to achieve that goal. Because the Secretary plainly relied on § 102(b)(1) in her waiver determinations, it cannot be ignored.

4. The Constitutional Avoidance Doctrine Is Inapplicable

Finally, Plaintiffs' constitutional avoidance argument, Pls.' Suppl. Br. at 12, 17-18, fails at the threshold because none of their claims "raise[] serious constitutional problems." *See United States v. Cano-Flores*, 796 F.3d 83, 94 (D.C. Cir. 2015); Defs.' Reply at 19. In addition, the text of § 102 does not permit the avoidance Plaintiffs seek, which would require (1) disregarding § 102(c)(1)'s reference to "this section" as a whole and replacing it with a reference to subsection 102(b); (2) interpreting § 102(b)(1)'s call for construction of "along not less than 700 miles of the southwest border" to essentially mean "not *more* than 700 miles." The canon of constitutional avoidance does not permit such rewriting of statutes. *See Cano-Flores*, 796 F.3d at 94 (noting that the canon only permits choosing among "linguistically permissible interpretations" that are not "plainly contrary to the intent of Congress"); *cf. Int'l Bhd. of Electrical Workers v. NLRB*, 814 F.2d 697, 699-700 (D.C. Cir. 1987) ("[C]ourts have no authority to enforce alleged principles gleaned solely from legislative history that has no statutory reference point."). At bottom, this is

[16] *See also* Written Testimony of Kirstjen Nielsen, DHS Secretary, Jan. 16, 2018 (link) ("However, make no mistake: that is nearly one thousand illegal immigrants coming across our border every day. This is an unacceptable risk to public safety and national security. . . . We must gain operational control of our borders."); Written Testimony of Carla Provost, Acting Chief, U.S. Border Patrol, June 13, 2017 (link) ("CBP has already begun to take all appropriate steps to plan, design, and construct a physical wall, using the materials and technology that will most effectively achieve operational control of the Southern border."); Testimony of Michael Fisher, Chief, U.S. Border Patrol, Feb. 15, 2011 (link) (explaining that from 2004 through at least 2011, "operational control" was used by DHS as a "tactical" term that "can only be achieved by incrementally applying resources to a point where field commanders can consistently respond to and resolve illegal entries").

not a case where the result decreed by the plain text "compel[s] an odd result" or is "difficult to fathom" or "seem[ingly] inconsistent with Congress' intention." Pls.' Suppl. Br. at 12, 17 (quoting *Public Citizen v. Dept. of Justice*, 491 U.S. 440, 443, 455 (1989)). Instead, Plaintiffs simply disagree with Congress' decision to prioritize border infrastructure so long as there are "areas of high illegal entry," § 102(a), and the infrastructure is needed to "gain operational control of the southwest border." § 102(b)(1).

C. Defendants Have Not Violated the Consultation Requirement

DHS has explained that it complies with the consultation requirement in § 102(b)(1)(C), even where it has issued a waiver, by discussing potential impacts with relevant stakeholders before beginning construction. *See* Defs.' Mem. at 26-30; Defs.' Reply at 17-19. This satisfies the requirement of consulting "in carrying out this section." IIRIRA § 102(b)(1)(C).[17] While Plaintiffs are adamant that consultation with stakeholders must occur "prior to . . . the issuance of the waiver itself," Pls.' Suppl. Br. at 19, DHS has explained that nothing in the statutory text requires consultation regarding whether to issue a waiver, let alone that consultation occur before the waiver is issued. *See* Defs.' Mem. at 26-28; *N. Am. Butterfly Ass'n*, 2019 WL 634596, at *6 ("Pre-waiver consultation may be wise policy, but it is not a statutory requirement [under § 102]."); *In re Border Infrastructure Envtl. Litig.*, 284 F. Supp. 3d at 1126 (holding that IIRIRA lacks "a 'clear and mandatory' mandate regarding the timing of consultation"). Here, as detailed in the Enriquez Declarations, extensive consultation occurred before construction began on any of the challenged projects. *See* 2d Enriquez Decl. ¶¶ 19-36; *see also* 1st Enriquez Decl. ¶¶ 16-22, ECF No. 21-11. This claim cannot provide a basis to set aside the Secretary's waiver determinations.

[17] DHS's observation at oral argument that the consultation provision applies to "carrying out this section as a whole" Dec. 18, 2018 Hr'g Tr. at 50, was not a concession but a reiteration of DHS's consistent position—that consultation is required in connection with DHS's construction activities under § 102, even when a § 102(c) waiver is involved.

II. PLAINTIFFS' CONSTITUTIONAL CLAIMS ARE MERITLESS

While Plaintiffs attempt to argue that DHS's reliance on § 102(b)(1) in addition to § 102(a) confirms their constitutional claims, *see* Pls.' Suppl. Br. at 4-12, in reality this plays no meaningful role for those legal issues. Section § 102(b)(1) is no more expansive than § 102(a), and therefore gives rise to no additional constitutional difficulties. Each of Plaintiffs' constitutional claims fails for straightforward reasons previously addressed—the intelligible principle that Congress provided to guide DHS's exercise of delegated discretion is well within the bounds provided by existing precedent, *see* Defs.' Mem. at 30-34; Defs.' Reply at 19-21; a waiver is not an improper amendment or repeal of a statute outside the legislative process, *see* Defs.' Mem. at 34-36; Defs.' Reply at 22-23; and the Take Care Clause does not constitutionalize ultra vires claims, *see* Defs.' Mem. at 36-38; Defs.' Reply at 23-25. DHS rests on its prior briefing of the constitutional claims, except to note the following responses to Plaintiffs' latest arguments.

First, Plaintiffs' citation of a passage from *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978), *see* Pls.' Suppl. Br. at 6, supports the government's position here. In that case, the Court expressed concern about judicial interference with Congress' prerogative to "not only formulate legislative policies and mandate programs and projects, but also to establish their relative priority for the Nation." 437 U.S. at 194. The Court found that the Endangered Species Act required halting construction of a federal dam, and then refused to craft a remedy that discounted the statute in favor of the more than $100 million that Congress had spent on the almost completed dam. *See id.* at 194-95. By contrast, in this case, DHS has not violated any clear statutory requirement. Instead, DHS has merely "administer[ed] the law[]" to implement priorities that *Congress set* in § 102. *Cf. id.* at 194 ("Once Congress, exercising its delegated powers, has decided the order of priorities in a given area, it is for the Executive to administer the laws and for the courts to enforce them when enforcement is sought.").

Plaintiffs concede that Congress "has the power to craft legislation prioritizing border wall construction above all other legal interests." Pls.' Suppl. Br. at 7. But Plaintiffs refuse to accept that Congress has in fact done so. They claim that the only permissible way for Congress to proceed would be to "legislate a blanket prioritization," *id.*, and that the compromise the conference committee ultimately adopted—removing the bill's command that the Secretary "shall waive" all legal requirements impeding expeditious construction, *see* H.R. Rep. 109-72 at 171 (May 3, 2005) (Conf. Rep.)—abdicates priority-setting and renders the statute unconstitutional. Plaintiffs are mistaken. Congress has clearly prioritized border infrastructure over other legal interests; giving DHS the flexibility to not always displace other laws does not change that. Indeed, it is Plaintiffs who are seeking what TVA sought—a judicial rebalancing of clear legal provisions to more "reasonably" serve Plaintiffs' view of the public interest. *See* 437 U.S. at 194. The Court should firmly reject Plaintiffs' effort because "[o]ur Constitution vests such responsibilities in the political branches." *Id.* at 195.

Second, Plaintiffs err in stating that a Congressional Research Service memorandum concluded that "[t]he power to 'waive all [legal requirements]' that impede construction of U.S.-Mexico border infrastructure is broader than any delegated power heretofore upheld by the Supreme Court." Pls.' Suppl. Br. at 4 n.5 (purportedly quoting Stephen Vina and Todd Tatelman, Congressional Research Service Memorandum on Sec. 102 of H.R. 418, Waiver of Laws Necessary for Improvement of Barriers at Borders 2-4 (2005)).[18] Instead, that memorandum merely concluded that "the breadth of waiver authority granted by §102 of H.R. 418 does not appear to be common in the federal law searched" and that the researchers were "unable to locate

[18] That quote instead comes from a student comment, *see* Pls.' Reply at 25 n.23, ECF No. 23 (quoting Bryan Clark, Refining the Nondelegation Doctrine in Light of REAL ID Act 102(c): Time to Stop Bulldozing Constitutional Barriers for Border Fence, 58 Cath. U.L. Rev. 851, 868 (2009)), which, as DHS has previously addressed, merely presents unsupported opinion built on a non sequitur. *See* Defs.' Reply at 20 n.19.

a waiver provision identical to that of § 102 of H.R. 418." *See* Vina, et al., Memorandum on Sec. 102 of H.R. 418, Waiver of Laws Necessary for Improvement of Barriers at Borders at 2, 4 (2005) (link). The various waiver provisions described by these researchers demonstrate that while § 102(c) is unusual in scope, it does not differ in kind from other waiver provisions. *See, e.g.*, *id.* at 3 (describing 43 U.S.C. § 1652(c), which permits waiver of procedural requirements of law or regulation for construction, operation, and maintenance of Trans-Alaska oil pipeline system). This undermines each of Plaintiffs' constitutional theories because Plaintiffs lack a limiting principle for their arguments that the waiver authority at issue here violates the Nondelegation Doctrine, the Presentment Clauses, and the Take Care Clause, but that other waiver provisions do not.

Third, Plaintiffs belatedly seek to augment their Non-Delegation Doctrine arguments by suggesting that judicial review of whether the agency exceeded its statutory authority is essential to permissible delegations. *See* Pls.' Suppl. Br. at 10-12. This argument previously only merited an oblique reference in a footnote in their opening brief. *See* Pls.' Mem. in Supp. Mot. Summ. J. at 41 n.39, ECF No. 16-1. While Plaintiffs cite Justice Thurgood Marshall's concurrence in *Touby v. United States*, 500 U.S. 160, 170 (1991), it simply is not the law that judicial review is essential for delegations of authority. The Ninth Circuit has considered and rejected this specific claim, *see United States v. Bozarov*, 974 F.2d 1037, 1041 (9th Cir. 1992) (agreeing with government that the Non-Delegation Doctrine does not require judicial review because "the purpose of the intelligible principle is simply to channel the discretion of the executive and to permit Congress to determine whether its will is being obeyed"); and the Supreme Court has twice denied certiorari petitions pressing Plaintiffs' theory.[19] Indeed, such an approach is not reconcilable with the courts' repeated

[19] *See* Cert. Petition at 29-31, *Animal Legal Defense Fund v. DHS*, No. 18-247, 2018 WL 4105818 (Aug. 23, 2018), cert. denied, 139 S. Ct. 594 (Dec. 4, 2018); Cert. Petition at 12-19, *Defenders of Wildlife v. Chertoff*, No. 07-1180, 2008 WL 727967 (Mar. 17, 2008), cert. denied, 554 U.S. 918 (2008).

observations that judicial review of non-constitutional challenges to agency action is not required. *See, e.g.*, *Estep v. United States*, 327 U.S. 114, 120 (1946) ("[E]xcept when the Constitution requires it, judicial review of administrative action may be granted or withheld as Congress chooses."); *Ralpho v. Bell*, 569 F.2d 607, 622 & n.101 (D.C. Cir. 1977) ("The D.C. Circuit long ago observed that nothing "prevent[s] [Congress] from shielding even the most patent deviation from the statutory scheme from judicial redress where the Constitution is in no wise implicated.").

Fourth, Plaintiffs also claim that the potential preemption of state laws raises additional concerns. Pls.' Suppl. Br. at 8 n.7. Their sole citation, a dissenting opinion, does not support their contention. In *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1 (2007), Justice Stevens dissented because he found no congressional intent to preempt state law. *See id.* 550 U.S. at 31-44. He "agree[d] with the Court that the Tenth Amendment does not preclude" an "administrative agency's power to pre-empt state laws." *Id.* at 43-44. He emphasized that "Congress knows how to authorize executive agencies to pre-empt state laws" but simply "has not done so here." *Id.* at 38. Thus, Justice Stevens concerns have nothing to do with § 102. There can be no doubt that Congress intended "all legal requirements" to encompass state laws. *See* H.R. Rep. 109-72 at 171 (May 3, 2005) (Conf. Rep.) (noting that the California Coastal Commission had "prevented completion of the San Diego border security infrastructure" on the ground that the plans were inconsistent with a "state program," and explaining "Congress' intent that the Secretary's discretionary waiver authority extends to any local, state or federal statute, regulation, or administrative order that could impede expeditious construction of border security infrastructure"). Nor is there any meaningful Tenth Amendment concern with regard to such a waiver provision. *See In re Border Infrastructure Envtl. Litig.*, 284 F. Supp. 3d at 1144-46 (rejecting each Tenth Amendment argument brought by the State of California).

CONCLUSION

For the foregoing reasons, Plaintiffs' claims should be dismissed as a matter of law or, in the alternative, the Court should deny Plaintiffs' motion for summary judgment and grant summary judgment to Defendants.

Dated: February 15, 2019

Respectfully submitted,

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APPENDIX A: SECTION 102(C) WAIVER DETERMINATIONS (excerpts, emphasis added)

Citation	Description of Relevant Authority	Factual Determination	Waiver
70 Fed. Reg. 55622 (Sept. 22, 2005)	**In section 102(a)** of the [IIRIRA], Congress provided that the Attorney General shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. . . . **In section 102(b) of the IIRIRA**, Congress specifically provided for the construction along the 14 miles of the international land border of the United States, starting at the Pacific Ocean and extending eastward, of second and third fences, in addition to the existing reinforced fence, and for roads between the fences.	In order to ensure the expeditious construction of **the barriers and roads that Congress prescribed in section 102(b) of the IIRIRA**, regarding which Congress expressed its support in section 446 of the HSA, 116 Stat. 2195 (6 U.S.C. 256), and which is an area of high illegal entry into the United States, I have determined that it is necessary that I exercise the authority . . . that is vested in me by section 102(c) of the IIRIRA as amended by section 102 of the REAL ID Act.	Accordingly, I hereby waive in their entirety, with respect to the construction of **the barriers and roads prescribed in section 102(b) of the IIRIRA** (including, but not limited to, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of fences, roads, supporting elements, drainage, erosion controls, safety features, detection equipment, and lighting), all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following laws, as amended: . . . .
72 Fed. Reg. 2535 (Jan. 19, 2007)	**In section 102(a)** of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), . . . Congress provided that the Attorney General shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. . . . In section 3 of the Secure Fence Act of 2006 (Secure Fence Act), Public Law 109–367), Congress amended **Section 102(b) of IIRIRA** to provide for the installation of fencing, barriers, roads, lighting, cameras, and sensors along five segments of the southern border of the United States, including much of the border between Arizona and Mexico.	I have determined that the area in the vicinity of the United States border known as the Barry M. Goldwater Range (BMGR), . . . is an area of high illegal entry. This area is also **within the footprint of infrastructure provided for in Section 102(b)(1)(A)(ii) of IIRIRA** as amended by the Secure Fence Act. . . . In order to ensure the expeditious construction of **the barriers and roads that Congress prescribed in sections 102(a) and 102(b) of the IIRIRA** in the BMGR, which is an area of high illegal entry into the United States, I have determined that it is necessary to exercise the authority . . . that is vested in me by section 102(c) of the IIRIRA as amended by section 102 of the REAL ID Act.	Accordingly, with respect to the construction, **as prescribed in sections 102(a) and 102(b) of the IIRIRA**, of roads and fixed and mobile barriers within the BMGR and within five miles to the west of the BMGR (including, but not limited to, accessing the project area, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of fences, roads, supporting elements, drainage, erosion controls, safety features, surveillance, communication, and detection equipment of all types, radar and radio towers, and lighting), I hereby waive, in their entirety, all Federal, State, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following laws, as amended: . . . .

Citation	Description of Relevant Authority	Factual Determination	Waiver
72 Fed. Reg. 60870 (Oct. 26, 2007)	**In section 102(a)** of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, . . . Congress provided that the Attorney General shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States.	I determine that the area in the vicinity of the United States border [adjacent to] the San Pedro Riparian National Conservation Area . . . is an area of high illegal entry. There is presently a need to construct fixed and mobile barriers (such as fencing, vehicle barriers, towers, sensors, cameras, and other surveillance, communication, and detection equipment) and roads in the vicinity of the border of the United States. In order to ensure the expeditious construction of **the barriers and roads that Congress prescribed in the IIRIRA** in the area . . . , which is an area of high illegal entry into the United States, I have determined that it is necessary that I exercise the authority . . . that is vested in me by section 102(c) of the IIRIRA as amended by section 102 of the REAL ID Act.	Accordingly, I hereby waive in their entirety, with respect to the construction of roads and fixed and mobile barriers (including, but not limited to, accessing the project area, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of fences, roads, supporting elements, drainage, erosion controls, safety features, surveillance, communication, and detection equipment of all types, radar and radio towers, and lighting) in the area . . ., all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following laws, as amended . . . .
73 Fed. Reg. 10977 (Apr. 8, 2008)	**In Section 102(a) of the IIRIRA**, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. **In Section 102(b) of the IIRIRA**, Congress has called for the installation of fencing, barriers, roads, lighting, cameras, and sensors on not less than 700 miles of the southwest border, including priority miles of fencing that must be completed by December of 2008.	I determine that the following area of Hidalgo County, Texas, in the vicinity of the United States border, hereinafter the Project Area, is an area of high illegal entry: . . . In order to deter illegal crossings in the Project Area, there is presently a need to construct fixed and mobile barriers and roads in conjunction with improvements to an existing levee system in the vicinity of the border of the United States as a joint effort with Hidalgo County, Texas. In order to ensure the expeditious construction of **the barriers and roads that Congress prescribed in the IIRIRA** in the Project Area, which is an area of high illegal entry into the United States, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of the IIRIRA as amended.	Accordingly, I hereby waive in their entirety, with respect to the construction of roads and fixed and mobile barriers (including, but not limited to, accessing the project area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of fences, roads, supporting elements, drainage, erosion controls, safety features, surveillance, communication, and detection equipment of all types, radar and radio towers, and lighting) in the Project Area, all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following laws, as amended: . . . .

Citation	Description of Relevant Authority	Factual Determination	Waiver
73 Fed. Reg. 10978 (Apr. 8, 2008)	**In Section 102(a) of IIRIRA**, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. **In Section 102(b) of IIRIRA**, Congress has called for the installation of fencing, barriers, roads, lighting, cameras, and sensors on not less than 700 miles of the southwest border, including priority miles of fencing that must be completed by December 2008.	I determine that the following areas in the vicinity of the United States border, located in the States of California, Arizona, New Mexico, and Texas are areas of high illegal entry (collectively ''Project Areas''): . . . In order to deter illegal crossings in the Project Areas, there is presently a need to construct fixed and mobile barriers (such as fencing, vehicle barriers, towers, sensors, cameras, and other surveillance, communication, and detection equipment) and roads in the vicinity of the border of the United States. In order to ensure the expeditious construction of **the barriers and roads that Congress prescribed in the IIRIRA** in the Project Areas, which are areas of high illegal entry into the United States, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of the IIRIRA as amended.	Accordingly, I hereby waive in their entirety, with respect to the construction of roads and fixed and mobile barriers (including, but not limited to, accessing the project area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of fences, roads, supporting elements, drainage, erosion controls, safety features, surveillance, communication, and detection equipment of all types, radar and radio towers, and lighting) in the Project Areas, all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following laws, as amended: . . . .
82 Fed. Reg. 35984 (Aug. 2, 2017)	**In section 102(a) of IIRIRA**, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. **In section 102(b) of IIRIRA**, Congress has called for the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border.	I determine that the following area in the vicinity of the United States border, located in the state of California within the United States Border Patrol's San Diego Sector, which is referred to herein as the Project Area, is an area of high illegal entry: . . . . There is presently a need to construct physical barriers and roads, including the infrastructure projects described in Section 1, in the vicinity of the border of the United States to deter illegal crossings in the Project Area. In order to ensure the expeditious construction of the barriers and roads in the Project Area, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA as amended.	Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the Project Area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, and safety features) in the Project Area, the following statutes, including all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended:

Citation	Description of Relevant Authority	Factual Determination	Waiver
82 Fed. Reg. 42829 (Sept. 12, 2017)	**In section 102(a) of IIRIRA**, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. **In section 102(b) of IIRIRA**, Congress has called for the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border.	I determine that the following area in the vicinity of the United States border, located in the State of California within the United States Border Patrol's El Centro Sector is an area of high illegal entry (the ''Project Area''): . . . . There is presently a need to construct physical barriers and roads in the vicinity of the border of the United States to deter illegal crossings in the Project Area. In order to ensure the expeditious construction of the barriers and roads in the Project Area, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of the IIRIRA as amended.	Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the Project Area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, and safety features) in the Project Area, the following statutes, including all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended:
83 Fed. Reg. 3012 (Jan. 22, 2018)	**In section 102(a) of IIRIRA**, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. **In section 102(b) of IIRIRA**, Congress has called for the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border.	I determine that the following area in the vicinity of the United States border, located in the State of New Mexico within the United States Border Patrol's El Paso Sector is an area of high illegal entry (the "project area"): . . . . There is presently a need to construct physical barriers and roads in the vicinity of the border of the United States to deter illegal crossings in the project area. In order to ensure the expeditious construction of the barriers and roads in the project area, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of the IIRIRA as amended.	Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the project area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, and safety features) in the project area, the following statutes, including all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended: . . . .

Citation	Description of Relevant Authority	Factual Determination	Waiver
83 Fed. Reg. 50949 (Oct. 10, 2018)	**In section 102(a) of IIRIRA**, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. **In section 102(b) of IIRIRA**, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border.	I determine that the following areas in the vicinity of the United States border, located in Cameron County in the State of Texas, within the United States Border Patrol's Rio Grande Valley Sector, are areas of high illegal entry (the ''project area''): . . . . There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project area. In order to ensure the expeditious construction of the barriers and roads in the project area, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.	Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the project area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project area, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended: . . . .
83 Fed. Reg. 51472 (Oct. 11, 2018)	**In section 102(a) of IIRIRA**, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. **In section 102(b) of IIRIRA**, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border.	I determine that the following areas in the vicinity of the United States border, located in Hidalgo County in the State of Texas, within the United States Border Patrol's Rio Grande Valley Sector, are areas of high illegal entry (the ''project area''): . . . . There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project area. In order to ensure the expeditious construction of the barriers and roads in the project area, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.	Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the project area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project area, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended: . . . .

Citation	Description of Relevant Authority	Factual Determination	Waiver
84 Fed. Reg. 2897 (Feb. 8, 2019)	**In section 102(a) of IIRIRA**, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. **In section 102(b) of IIRIRA**, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border.	I determine that the following area in the vicinity of the United States border, located in the State of California within the United States Border Patrol's San Diego Sector, is an area of high illegal entry (the ''project area''): . . . . There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project area. In order to ensure the expeditious construction of the barriers and roads in the project area, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.	Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the project area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project area, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended: . . . .

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY, *et al.*, *Plaintiffs*, v. KIRSTJEN M. NIELSEN, *et al.*, *Defendants*.	Civil Action No. 1:18-00655 (KBJ)

DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING TEXAS WAIVERS AND DEFENDANTS' STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE DISPUTE

Pursuant to LCvR 7(h), Defendants respond to Plaintiffs' supplemental statement of material facts, ECF No. 30-1, and separately set forth below the material facts pertinent to Defendants' cross-motion for summary judgment. As an initial matter, the legal challenges in this case should be reviewed on the basis of the administrative record and, accordingly, under LCvR 7(h)(2) no separate statements should be required. But to the extent that the Court deems compliance with LCvR 7(h)(1) necessary, Defendants state as follows:

I. RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

1-3. Defendants do not dispute the facts asserted in paragraphs 1-3 of Plaintiffs' statement.

4. Defendants do not dispute the facts asserted in paragraph 4, except to clarify that DHS began seeking public input in August 2018 and that the September 6, 2018 letter extended

the comment period through November 6, 2018, inviting comments regarding "potential impacts to the environment, culture, and commerce, including potential socioeconomic impacts, and quality of life." *See* Enriquez Letter, Sept. 6, 2018 (link); 2d Enriquez Decl. ¶¶ 20-21. While the October 10 and 11, 2018 waiver determinations were issued before the end of the comment period, the comments will continue to be used in CBP's analysis of potential impacts, including the Environmental Stewardship Plan that will be completed before construction begins on the Hidalgo County project. 2d Enriquez Decl. ¶¶ 21, 31.

5. Paragraph 5 is not material to any of Plaintiffs' legal claims. Defendants do not dispute that the project may have certain adverse impacts on the environment and wildlife, which DHS is assessing and has prepared (or will prepare) an environmental stewardship plan to mitigate. *See* 2d Enriquez Declaration ¶¶ 31-32.

II. DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On October 10, 2018, a waiver was published regarding the construction of gates to fill eleven gaps in levee walls in Cameron County, Texas. *See* 83 Fed. Reg. 50949-50 (Oct. 10, 2018).

2. On October 11, 2018, a waiver was published regarding approximately 18 miles of additional barriers and roads in Hidalgo County, Texas. *See* 83 Fed. Reg. 51472-73 (Oct. 11, 2018).

3. Both projects involve the Rio Grande Valley Sector; the Cameron County project is within the scope of the work originally intended to be completed pursuant to an April 2008 waiver determination. *See* 73 Fed. Reg. 19078 (Apr. 8, 2008); Ex. 1, Second Declaration of Paul Enriquez ("2d Enriquez Decl.") ¶¶ 8, 32-33.

4. In support of her determinations, the Secretary made three factual determinations:

- that each project area "is an area of high illegal entry,"
- that there is "presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States the project area," and
- that exercise of waiver authority under the IIRIRA was necessary "to ensure the expeditious construction of the barriers and roads in the project area."

83 Fed. Reg. at 51473; 83 Fed. Reg. at 50950.

5. The Secretary announced the waiver of certain laws "with respect to the construction of roads and physical barriers . . . in the Project Area[s]." 83 Fed. Reg. at 51473; 83 Fed. Reg. at 50950.

6. The projects are funded by 2017 and 2018 appropriations. *See* 2d Enriquez Decl. ¶¶ 13-14; Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Division F, Title II, § 230, 132 Stat. 348, 616 (Mar. 23, 2018); Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, Div. F, Title VI, 131 Stat. 135, 434 (May 5, 2017).

7. Construction started on the Cameron County project in November 2018. 2d Enriquez Decl. ¶ 11. The projects to be conducted in Hidalgo County are scheduled to begin construction in March 2019. *Id.* ¶ 14.

8. Significant consultation with relevant stakeholders occurred prior to the waiver determinations and the beginning of construction, and remains ongoing. *See id.* ¶¶ 15-38.

Dated: February 15, 2019

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY, ET AL. v. NIELSEN, ET AL.	Case No. 1:18-cv-00655-KBJ

SECOND DECLARATION OF PAUL ENRIQUEZ

I, Paul Enriquez, depose and state as follows:

1. I am the Acquisitions, Real Estate and Environmental Director for the Border Wall Program Management Office ("Wall PMO"), U.S. Border Patrol Program Management Office Directorate, U.S. Customs and Border Protection ("CBP"), an agency of the Department of Homeland Security ("DHS"). I have held this position since August 6, 2018. From 2014 to August of 2018, I was the Real Estate and Environmental Branch Chief for the Border Patrol and Air and Marine Program Management Office ("BPAM"), Facilities Management and Engineering, Office of Facilities and Asset Management ("OFAM"). From 2011 to 2014, I was employed as an Environmental Protection Specialist in the BPAM office. In that role, I performed environmental analyses for various border infrastructure projects. From 2008 to 2011, I was a contractor assigned to the

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BPAM office and provided environmental support on border infrastructure projects. Based upon my current and past job duties, I am familiar with past and planned border infrastructure projects that have been executed in support of border security.

2. I make this declaration based on my personal knowledge, on my experience at Wall PMO and BPAM, and information available to me in my official capacity.

BACKGROUND

3. In my capacity as the Acquisitions, Real Estate and Environmental Director, I am responsible for overseeing all environmental planning and compliance activities for projects executed by the Wall PMO. This includes compliance with the National Environmental Policy Act ("NEPA") and the Endangered Species Act ("ESA") as well as any other environmental laws that are triggered by such projects.

4. BPAM is the office within CBP that historically was responsible for the construction and maintenance of facilities, tactical infrastructure, and border infrastructure such as barriers and roads, that are required by the United States Border Patrol ("Border Patrol") or CBP Air and Marine, including projects that were carried out under waivers issued by the Secretary of Homeland Secretary ("the Secretary") pursuant to Section 102 of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, as amended ("IIRIRA"). As the office

that was responsible for these activities, BPAM, with oversight from OFAM, was also responsible for all environmental planning, compliance, and stewardship associated with these activities.

5. Responsibility for border barrier projects has been transferred from BPAM to the Wall PMO. Therefore, the Wall PMO is now responsible for any and all environmental planning, compliance, stewardship, and consultation for border barrier projects.

6. Given that background, I am responsible for overseeing all environmental planning and consultation for the wall projects in Texas in the Border Patrol's Rio Grande Valley Sector ("RGV Sector") that are to be carried out under the IIRIRA waivers that were published in the Federal Register on October 10, 2018, 83 Fed. Reg. 50, 949 (October 10, 2018) (the "Cameron County Waiver") and October 11, 2018, 83 Fed. Reg. 51,472 (October 11, 2018) (the "Hidalgo County Waiver") (collectively the "Texas Waivers").

7. CBP has an established track record of robust consultation with stakeholders and environmental stewardship for projects covered by an IIRIRA waiver. As detailed in the paragraphs below, CBP's commitment to consultation with stakeholders and environmental stewardship has continued for the projects that are to be carried out under the Texas Waivers.

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THE PROJECTS

8. The Cameron County Waiver will cover the installation of mechanical gates in existing border barriers (the "Cameron County Gates Project"). The project area described in the Cameron County Waiver covers the eleven sites where CBP plans to install mechanical gates in existing border barriers (the "Cameron County Project Area"). The Cameron County Project area is situated in the Border Patrol's Rio Grande Valley Sector ("RGV Sector"). The mechanical gates will fill gaps in existing barriers that were constructed in 2008 pursuant to a prior IIRIRA waiver, 73 Fed. Reg. 19078 (Apr. 8, 2008).

9. The Hidalgo County Waiver covers the construction of approximately 14 additional miles of levee wall in Hidalgo County, Texas (the "Hidalgo Levee Wall Project"). The project area described in the Hidalgo County Waiver covers the six distinct segments of the border where CBP will construct the approximately 14 miles of new levee wall (the "Hidalgo County Project Area"). The Hidalgo County Project Area is also situated in the RGV Sector.

10. The Cameron County Gates Project and the Hidalgo Levee Wall Project are collectively referred to as the "Projects." The Cameron County Project Area and the Hidalgo County Project Area are collectively referred to as the "Project Areas."

11. Construction work on the Cameron County Gates Projects began in November of 2018. The estimated project completion date is May of 2019.

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12. Construction work on the Hidalgo Levee Wall Project is scheduled to begin in March of 2019. The estimated project completion date is January 2020.

13. The Cameron County Gates Project is funded by the 2017 DHS Appropriation, which appropriated funds for "the highest priority border security requirements," including, in relevant part, the appropriation of:

> $341,200,000 to replace approximately 40 miles of existing primary pedestrian and vehicle border fencing along the southwest border using previously deployed and operationally effective designs, such as currently deployed steel bollard designs, that prioritize agent safety; and to add gates to existing barriers[.]

Public Law 115-31, Division F, Title VI, 131 Stat. 135, 434.

14. The Hidalgo Levee Wall Project is funded by the 2018 DHS Appropriation, which appropriated $445,000,000 for levee wall in the Rio Grande Valley Sector. Public Law 115-141, Division F, Title II, § 230, 132 Stat. 348, 616.

CONSULTATION AND ENVIRONMENTAL STEWARDSHIP

A. Background

15. CBP has long had a border security presence both in the Project Areas and their surrounding area. CBP has also completed numerous border infrastructure projects in the RGV Sector including, among other things, prior levee wall construction and the construction of roads, boat ramps, and surveillance towers. CBP engaged in environmental planning, compliance, and stewardship for all of these prior projects. Through those prior efforts CBP has developed a deep

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understanding and awareness of the natural, biological, historic, and cultural resources in the area.

16. To cite just a few recent examples, in 2016 CBP released an Environmental Assessment ("EA") concerning the upgrade of Remote Video Surveillance Systems in the RGV Sector. Also in 2016, CBP released an EA concerning the mechanical removal of Carrizo cane in RGV. In 2015, CBP released an EA concerning the repair and maintenance of tactical infrastructure throughout the state of Texas. This 2015 EA was the culmination of years of analysis and consultation with stakeholders concerning CBP's repair and maintenance of existing and proposed tactical infrastructure in Texas, including infrastructure in the RGV Sector.

17. In 2008 CBP prepared an Environmental Stewardship Plan (the "2008 ESP") covering the construction of levee wall, roads, and gates both in and adjacent to the Project Areas. The 2008 ESP analyzed the potential impacts to natural and cultural resources from the construction of such infrastructure. As a part of the preparation of the 2008 ESP, CBP conducted historic, cultural, biological, and other natural resource surveys in the Project Areas and coordinated with numerous stakeholders concerning potential impacts. For example, CBP solicited input from the United States Fish and Wildlife Service ("USFWS") regarding threatened and endangered species and habitat in the Project Areas, consulted with the Texas State Historic

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Preservation Officer and Native American Tribes concerning historic and cultural resources in and adjacent to the Project Areas, and sought input from federal, state, and local authorities, resource agencies, and the public concerning environmental issues, including mitigation and avoidance measures.

18. CBP has drawn on this deep understanding and awareness of the natural, biological, historical, and cultural resources of the Project Areas in both its engagement and consultation with stakeholders and its assessment of potential impacts of the Projects.

B. Consultation and Stewardship for the Projects

19. For the Projects, CBP has engaged in a range of actions to both consult with stakeholders and uphold its commitment to environmental stewardship.

1. The Hidalgo Levee Wall Project

20. On August 25, 2017, CBP initiated a public scoping process concerning potential wall construction in the RGV Sector by sending letters to federal, state, local government agencies, and tribes. The information obtained from the scoping process is used by CBP in its analysis of potential impacts to the environment, culture, commerce, and quality of life.

21. Following receipt of its Fiscal Year 2018 appropriation, CBP sent a follow-up set of scoping letters to possible stakeholders providing additional project details based on appropriations received for the projects, including the Hidalgo

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Levee Wall Project. In August 2018, CBP broadened its scoping effort and sent an additional set of letters to stakeholders and other potentially interested groups. CBP also informed the public of its request for comments by providing information in local community centers within the RGV Sector and posting information on the CBP public web site. In each set of letters, CBP requested information from stakeholders and the public to assist CBP in identifying possible areas of environmental concern and obtain recommendations or other data and information that would assist in minimizing or eliminating potential environmental impacts from the proposed wall construction in RGV. CBP provided the scoping request and accompanying information in English and Spanish to reach a broader audience. Based on initial feedback received from stakeholders, following the August 2018 letters, CBP extended the deadline for public comments until November 6, 2018 to allow the public more time to respond. Although the Hidalgo County Waiver was issued prior to the end of the comment period, CBP is still reviewing, analyzing, and responding to the comments. Comments received by CBP will continue to be used in CBP's analysis of potential impacts. CBP also incorporated the comments into a stakeholder feedback report that has been made public and posted to the CBP public web site: https://www.cbp.gov/document/environmental-assessments/rio-grande-valley-leveeborder-wall-system-construction-projects.

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22. In October 2018, CBP hosted public webinars to provide updated information concerning wall construction in the RGV Sector, including the Hidalgo Levee Wall Project and the recently-issued Hidalgo County Waiver, and answer participants' questions. Information concerning the webinars is posted to the CBP website: https://www.cbp.gov/document/environmental-assessments/rio-grande-valley-leveeborder-wall-system-construction-projects.

23. In addition to outreach and consultation with the general public, CBP has also engaged directly with stakeholders. For example, in February 2018, CBP conducted site visits with the Department of the Interior ("DOI") to observe and better understand interagency operations affecting DOI-managed lands along the U.S.-Mexico border in RGV, including land that is within the Hidalgo County Project Area, as well as to improve interagency coordination and communication.

24. In April 2018, CBP hosted an outreach meeting with 24 irrigation districts that own land near proposed wall projects, including the Hidalgo Levee Wall Project. In May 2018, CBP met with about 30 participants from local legislative staff across local governments in RGV to discuss the proposed projects.

25. In May 2018, CBP conducted additional site visits with DOI, the USFWS, and the Environmental Protection Agency to discuss wall projects in RGV, including the Hidalgo Levee Wall Project, and to obtain information, concerns, and recommendations on methods to minimize or eliminate potential environmental

impacts.

26. Since April 2018, CBP has been meeting individually with private landowners who own land in the Hidalgo County Project Area. During these in-person meetings, representatives from the U.S. Army Corps of Engineers and CBP provided the landowners with initial design information, answered questions, identified issues of potential concern, and allowed the landowners to request changes in design for the barriers that are proposed for construction on their property.

27. Additionally, local Border Patrol stations hold regular stakeholder meetings. Border Patrol invites landowners and other impacted stakeholders such as the USFWS, the International Boundary and Water Commission, and State and local law enforcement, to these stakeholder meetings. CBP uses the meetings to provide landowners and stakeholders who may be impacted by the construction wall in RGV with project updates.

28. CBP continues to engage with DOI and USFWS, including USFWS refuge managers in the RGV, to identify design elements that will lessen or eliminate impacts to biological resources. As an example, USFWS provided CBP with data related to wildlife migration corridors and recommendations for design elements for wall construction in RGV that support both wildlife migration and border security. As a part of this consultation, CBP has worked with USFWS to overlay

the proposed wall alignments with mapped migration paths so that CBP can include gates or gaps at the known migration paths. CBP used this information as it completed its design of the Hidalgo Levee Wall Project in an effort to minimize impacts to wildlife. Additionally, based on input from DOI and USFWS, CBP modified the design of the levee access ramps that are a part of the Hidalgo Levee Wall Project. The redesign will modify the ramps to form an island accessible to both larger and smaller species in the event of a flood event. CBP also continues to consult with stakeholders, including State, local, and Federal land managers regarding impacts to wildlife and accessibility to park and refuge properties.

29. In addition the consultation described above, CBP sent three separate consultation letters, dated August 25, 2017, June 26, 2018, and August 23, 2018, to the Texas State Historic Preservation Officer concerning wall construction in RGV, including the Hidalgo Levee Wall Project. Letters were sent to several Native American tribes including Alabama-Quassarte Tribal Town, Apache Tribe of Oklahoma, Thlopthlocco Tribal Town, Comanche Nation of Oklahoma, Tonkawa Tribe of Oklahoma, Alabama Coushatta of Texas, Coushatta Tribe of Louisiana, Kickapoo Traditional Tribe of Texas, and Fort Sill Apache.

30. Additionally, CBP has consulted with stakeholders who own or manage sensitive lands in the Hidalgo County Project Area. In December 2018, CBP met with representatives from the National American Butterfly Association, which

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owns and manages the National Butterfly Center to discuss the design of the Hidalgo County Levee Wall, the proposed location of gates on the National Butterfly Center property, the results of the environmental surveys performed on the National Butterfly Center property, and the process for acquiring needed property on the National Butterfly Center property.

31. As was the case for other border wall projects constructed pursuant to an IIRIRA waiver, for the Hidalgo Levee Wall Project CBP will prepare an Environmental Stewardship Plan which will identify and analyze the potential environmental impacts. In addition, CBP has incorporated certain construction best management practices ("BMPs") into the Hidalgo Levee Wall Project in order to avoid or minimize impacts. The BMPs that have been incorporated into the Waiver Projects include, among other things, (1) an environmental briefing to all construction crews working on the project; (2) implementation of standard construction procedures to minimize the potential for erosion and sedimentation during construction, including a requirement to cease work during heavy rains; (3) required protocols for storage of fuel, oils, and other hazardous materials; and (4) a requirement that all work cease in the event that archeological items are discovered within the project area; and (5) if construction or clearing activities are scheduled during migratory bird nesting season (March to September), a requirement to submit a pre-construction migratory bird survey to identify active nests prior to the

start of any construction activity. The migratory bird BMP is intended to minimize or avoid harm to migratory birds during construction of the Hidalgo County Levee Wall.

2. The Cameron County Gates Project

32. The Cameron County Gates Project will fill gaps in existing barriers that were constructed pursuant to a prior IIRIRA waiver, 73 Fed. Reg. 19078 (Apr. 8, 2008). For this project, CBP relied in part on the consultation that occurred as a part of the construction of the existing barriers. For example, the 2008 ESP analyzed the potential impacts to environmental, historic and cultural resources from the construction of the existing barriers and the installation of mechanical gates in numerous locations, including the 11 locations that will be addressed as a part of the Cameron County Gates Project. The 2008 ESP was prepared after consultation and outreach with stakeholders. In addition, the analysis included in the 2008 ESP drew on CBP's own data collection as well as input from and consultation with key stakeholders, including DOI, USFWS, Texas State Historic Preservation Officer, Tribes, federal, state, and local authorities, resource agencies, and the public.

33. CBP was unable to install all of the gates it had planned as part of the 2008 project. When Congress appropriated additional funding for gates in 2017 DHS Appropriation, CBP initiated more consultation with stakeholders regarding the

Cameron County Gates Project.

34. CBP solicited input concerning the installation of gates in the scoping letters sent on August 25, 2017.

35. In the fall of 2018, CBP met with landowners who will be directly impacted by the Cameron County Gates Project to inform them of CBP's gates projects and to ensure that CBP understands and has accounted for their concerns, especially continuing to have access to areas south of the barrier.

36. Additionally, CBP has conducted multiple meetings with first responders to ensure responders understand how the gates operate and ensure the operations of the gates meet their needs for rapid access south of the levee wall.

37. The construction contractor will be required to implement CBP's standard suite of construction best management practices as part of the Cameron County Gates Project, to include such measures as (1) implementation of erosion and sedimentation control measures; (2) a requirement to cease work during heavy rains; and (3) required protocols for storage of fuel, oils, and other hazardous materials.

38. Going forward, CBP remains open to continuing dialogue with stakeholders concerning the Waiver Projects, particularly dialogue regarding measures that can be taken to mitigate impacts.

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I swear under penalty of perjury that the foregoing is true and correct.

Executed on this 15 day of February 2019.

Paul Enriquez

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 110th CONGRESS, FIRST SESSION

Vol. 153 WASHINGTON, WEDNESDAY, JULY 25, 2007 No. 120

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable SHELDON WHITEHOUSE, a Senator from the State of Rhode Island.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty God, we thank You for this day and for the freedoms and liberties of this Nation. Bless our leaders with wisdom and compassion so that they may serve You with faithfulness.

Guide our Senators so that they will honor one another and serve the common good. Help them to remember that they live and govern only through Your grace. Lord, pour Your love into their hearts so that their words and actions may be seasoned with Your fragrance.

Also, Lord, extend Your loving-kindness to those in our world who do not experience the blessings of freedom. Use our lawmakers to bring deliverance to captives and to help the oppressed go free. We desire to pray according to Your will. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SHELDON WHITEHOUSE led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 25, 2007.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SHELDON WHITEHOUSE, a Senator from the State of Rhode Island, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. WHITEHOUSE thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, this morning we will be in a period of morning business for 1 hour. The first half will be controlled by the Republicans. Once morning business is closed, the Senate will resume consideration of the Homeland Security appropriations bill.

I understand there are a number of amendments that are being talked about to be offered on this legislation today. I hope Members come and do that as quickly as possible.

WOUNDED WARRIOR ASSISTANCE ACT OF 2007

Mr. REID. Mr. President, I yesterday asked by unanimous consent that we adopt the Wounded Warrior legislation that was brought to the Senate during the Defense authorization bill in a form of a bipartisan amendment. A number of Senators worked very hard. Senator MURRAY is on the floor. She worked very hard, and a number of Senators have worked very hard on this legislation. It came about as a result of what we learned at Walter Reed about how our returning troops from Iraq and Afghanistan were being basically neglected. They had been wounded, and they were receiving unacceptable and poor treatment when they came home. That failure was learned about—not only about the veterans care system, which had many bureaucratic failures, but also the physical facilities that were there failed to meet a minimum level of acceptability. The American people were outraged by the facts that came to light, and the Senate took prompt action.

The Wounded Warrior amendment, now in legislation that is before the Senate, would address the substandard facilities we have talked about and we have seen. It would address the lack of seamless transition and develop one when medical care for troops is transferred from the Department of Defense to the Veterans' Administration, which oftentimes in the past has led to diminished care. It addresses the inadequacy of severance pay. It addresses the need for improved sharing of medical records between the Department of Defense and the Veterans' Administration. We are told now that there are as many as 600,000 pending claims of returning veterans. It addresses the inadequate care and treatment of traumatic brain injury and post-traumatic stress disorder, and a number of other very important items.

So I again renew my request. Yesterday we were told that the Republicans were looking at this. Mr. President, I am going to renew this request. There are all kinds of reasons, I guess, for objecting to something such as this. Now I am told the reason for objecting is the pay raise isn't included. The Wounded Warrior legislation becomes effective upon passage and approval. The pay raise for the troops doesn't become effective until October 1 or January 1—I don't know how the legislation reads, but it is not now. So that would not be a good reason in my estimation, and I think in the estimation of these wounded warriors, for objecting.

The pay raise does not become effective until the beginning of the fiscal year. In fact, I think it is January 1 of next year. It is different than a number

SAVE program serves the needs of numerous Federal, State and local agencies that need to verify immigration status for the purpose of determining eligibility for a wide variety of public benefit programs by providing them the necessary information from DHS records.

COMPETITIVE SOURCING

The Administration strongly opposes sections 515 and 528, which impose restrictions on competitive sourcing for work performed by the Immigration Information Officers at the U.S. Citizenship and Immigration Services and the Federal Law Enforcement Training Center instructor staff. Depriving DHS of the operational efficiencies gained by competition limits its ability to direct Federal resources to other priorities. Management decisions about public-private competition and accountability for results should be vested with the Department.

CONSTITUTIONAL CONCERNS

Several provisions of the bill purport to require advance approval by congressional committees prior to the obligation of funds. These include sections 504, 505, 509, and 534; and under the headings, "Border Security Fencing, Infrastructure, and Technology," and "Air and Marine Interdiction, Operations, Maintenance, and Procurement," U.S. Customs and Border Protection; "Salaries and Expenses," United States Secret Service; "Management and Administration," National Protection and Programs Directorate; and "Indicator Technology," United States Visitor and Immigrant Status.

Section 513 of the bill, which purports to prohibit the Executive Branch from screening certain airline passengers, should be stricken as inconsistent with the President's constitutional authority as Commander in Chief to take steps necessary to protect the Nation from foreign attack.

Section 518 purports to prohibit the use of funds with respect to the transmission of certain information to Congress. This section could impede communications within the Executive Branch and could undercut the President's constitutional duty to "take care that the Laws be faithfully executed." The Administration urges the Senate to delete the provision.

The PRESIDING OFFICER (Mr. CARPER). The Senator from South Carolina is recognized.

AMENDMENT NO. 2412 TO AMENDMENT NO. 2383

Mr. GRAHAM. Mr. President, I offer an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. GRAHAM], for himself, Mr. GREGG, Mr. SESSIONS, Mr. KYL, Mr. CORNYN, Mr. MCCONNELL, Mr. DOMENICI, Mr. MCCAIN, Mr. SUNUNU, Mr. MARTINEZ, Mr. COLEMAN, and Mr. SPECTER, proposes an amendment numbered 2412.

Mr. GRAHAM. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. GRAHAM. Mr. President, this amendment builds a little bit on what Senator BYRD is talking about. How the threats to the Nation are real, how to handle those threats, how much money we need, and where to put the money are all honest and genuine debates. But I think we found some common ground here as a nation from the last immigration debate.

Senator JUDD GREGG has been one of the leading advocates for stronger border security since I have been in the Senate.

During the last immigration debate in terms of a comprehensive approach to solving immigration policy, one of the things we seemed to find common ground on was the idea of providing additional border security. So the amendment I have just offered, which will be cosponsored by Senators GREGG, SESSIONS, KYL, CORNYN, MCCONNELL, DOMENICI, MCCAIN, SUNUNU, MARTINEZ, COLEMAN, SPECTER, and many others, seeks to build on what we did in the last debate—to make it a reality in the area in which we have common ground.

The amendment has $3 billion in terms of spending, emergency funding. I would argue that the border security situation in this country and visa overstays are emergencies and that we have lost operational control of our border. We have lost the ability to track people who come here on visas in terms of when their visas expire and whether they left, and we will pay a heavy price, not only economically and socially but from a national security perspective. Of the "Fort Dix Six" people who were caught conspiring to attack Fort Dix, NJ, I think three overstayed their visas and three came across the border illegally earlier on in their life. So this amendment puts the Senate and the American people's money where our mouth has been, and $3 billion will go a long way.

The goal of this amendment is to provide complete operational control of the U.S.-Mexican border. It will increase the number of Border Patrol agents to 23,000. It will allow us to appropriate four new unmanned aerial vehicles, 105 ground-based radar camera towers, 300 miles of vehicle barriers, 700 miles of border fencing, and a permanent end to the catch-and-release policy with 45,000 new detention beds.

This is a comprehensive border security amendment. It also authorizes things we need to have authorized from the last debate where we were not able to pass a comprehensive bill. It takes some of the stronger border security measures and makes them part of this amendment. As I said, it will increase the number of border security agents to 23,000. It adds 14,500 new Customs Border Patrol agents through fiscal year 2012, increasing the overall number to 30,000. The Sanctuary City problem Senator COBURN identified—he has modified his original proposal, and that is in this amendment.

This amendment authorizes a continued National Guard presence. It strengthens our laws to deny immigration benefits to aggravated felons, gang members, sex offenders, and child abusers. It really goes into our law and cleans up what is pretty much a mess by making sure we have the ability to detain and deport people who are dangerous, who have been convicted of serious offenses.

It gives State and local law enforcement authorities the ability to detain illegal aliens and transfer them to the Department of Homeland Security. It basically allows them to take money from Homeland Security grants and apply it to the cost of detaining and turning over illegal immigrants they may run into and apprehend.

As to visa overstayers, the 19 hijackers who came into America who perpetrated the acts of 9/11, I believe all of them—if not all of them, most of them—were visa overstayers. Forty percent of the illegal aliens in this country never come across the border; they overstay their visa. This will allow the Department of Homeland Security to come up with a tracking system to better identify visa overstayers, who have proven to be in the past some of the most dangerous people in terms of threat to the homeland. It will allow the agency to coordinate with local law enforcement mandatory detention and deportation.

It also gets tough on those who keep coming back across the border. There is this catch-and-release concept which needs to end. That is why we have 45,000 new bedspaces to detain people, give them the hearings required by law, and under this amendment, if you are caught coming back into the country after you have been deported, it has mandatory jail time.

One reason we have 12 million people here is that no one seems to take our laws too seriously, including ourselves. So now it is time to tell the world at large and those who would violate our laws that there will be a price to be paid, unlike the current system; that if you are caught coming back into the country after you have been deported, there will be mandatory jail time. This has been tried in some areas of the border, and it has been enormously successful.

There are many parts in this bill regarding employment eligibility and verification. The pilot program to have biometric cards to determine employment will be expanded, and those who tell us about possible threats to our Nation's transportation system or homeland, we are going to protect them from civil lawsuits. If you are trying to identify a problem and you call your government and say: I think there is a problem here, we are going to make sure you don't get sued for doing your civic duty.

So it is a comprehensive approach. It is a $3 billion dollar appropriation, and within that appropriation, we have some change in policy that will secure the homeland in a better fashion than the current system does. If this is not an emergency, I don't know what would be in terms of our national security interests.

The one thing the Congress—the Senate and the House—should agree on immediately, in my opinion, is gaining operational control, regaining operational control of our border and controlling the visa program that allows millions of people over time to come to the United States.

I would just make one point here. RAHM EMANUEL, one of the Democratic House leaders, was quoted recently as saying that his party will not attempt comprehensive immigration reform until at least the second term of a prospective Democratic President. That is a chilling statement. I think that is a very dangerous thing to be saying at a time when our Nation is under siege, and to suggest to the American people that the Democratic leadership in the House is going to put this topic off until the second term of a prospective Democratic President misses the point and really, literally, misses the boat. This is an emergency if there ever was one, and the idea of putting this off for 6 or 7 more years I think would be a national security nightmare. It would be an economic and social mistake for the ages in terms of the role the Congress would play.

So I urge my colleagues in the Senate not to go down the road that Congressman EMANUEL has laid out for the Democratic-controlled House; that is, putting this whole discussion off until the second term of a prospective Democratic President. I couldn't find a better issue to show difference between myself and my colleagues in the House at the Democratic leadership level than this issue. Not only should we do this now on this bill at this moment, we should have done this years ago.

This is one of the issues facing the American people where there is broad consensus by Republicans, Democrats, and Independents. People want operational control of their borders. They want more money spent to secure their borders and to control who comes to the country, and for those who violate our laws and commit crimes, a better process to detain them and deport them. That is exactly what this amendment does.

I believe our thinking on this amendment is very much in line with the American people. They see this very much as something we should have done a long time ago. Let's not forgo this opportunity. We tried just a few weeks ago, and that failed; a chance of having comprehensive reform failed. I feel an obligation to join forces with people who were disagreeing with me on a comprehensive approach to find common ground. I think the country is urging us to find that common ground. I believe this is a great place to start.

The Border Security First Act of 2007 has been a product that has been bipartisan in nature. It is a collaborative effort between people who have a common view of our border security needs, and it is good legislation. It is needed money at the right time. It is policy changes that will make us safer as a nation.

I would like to recognize Senator JUDD GREGG's efforts over many years to push the administration—and the Senate particularly—to deal better with the lack of control on our borders.

I look forward to talking about this amendment further. I appreciate all the cosponsors and the effort to do something constructive now. Let's, for heaven's sake, not wait 6 more years before we do something. Let's seize the moment, and the moment is now.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, I ask unanimous consent that at the conclusion of my remarks, the Senator from Maryland be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Mr. President, before congratulating the Senator from South Carolina for bringing forward this extremely important amendment, let me begin by congratulating the Senator from West Virginia and the Senator from Mississippi, the senior members of the Appropriations Committee, chairman and ranking member of the Appropriations Committee, who also are chairman and ranking member of the Subcommittee on Homeland Security, for bringing forward a bill which makes major strides toward addressing our needs as a nation to protect ourselves and to make sure our borders are secure.

This has been a very integral issue for both of these leaders for many years. Senator COCHRAN, who chaired this committee before the Democratic majority took over, and Senator BYRD, who was the ranking member on this committee for years and has been intimately involved in the effort to try to make sure we adequately address things like port security—their leadership is extraordinary, and this bill is a reflection of that. I do not want this amendment to in any way imply they have not made an extraordinary and a very effective effort to move forward with border security because within the context of the dollars they had available to them, they have done excellent work.

What this amendment does, however—and I congratulate the Senator from South Carolina for bringing it forward—is acknowledge the fact that we have an emergency here. It is as big and important an emergency relative to national security as the war in Iraq is. I look at them pretty much as the same type of national emergency. The issue of controlling our borders is an issue of national security, of making sure that we as a country are safe and we maintain our viability as a nation. A country that doesn't control its borders is not safe and will lose its viability as a nation. So nothing is more important to us from the standpoint of protecting national security and making sure we get operational control over the borders, which the Senator pointed out effectively, as this amendment moves forward.

Some have said: Why would the former Budget Committee chairman, and now ranking member, be willing to offer an emergency resolution which brings this bill up by $3 billion? That is the reason. I have voted to make sure our troops are fully funded in Iraq. I am voting for this amendment because it will make sure we have the people we need on the border to assure that our national security is maintained. In maintaining security over the border, this amendment, once and for all, will put into place the necessary funding—this isn't an authorizing event, remember—to be sure we have the boots on the ground, the technology in place, and the detention capability in place in order to manage the border.

It takes the present situation where we are ramping up the 20,000 border agents and increases that number to 30,000 by 2012, and prefunds it, for all intents and purposes. In addition, it gives us 45,000 detention beds, which is what we need to stop the catch-and-release process. So when the border agents apprehend someone whom they deem to be in this country inappropriately, they have a place they can put that person, where they can find them until they make a final determination—when the court system makes a final determination of whether that person is illegally in this country and should be returned.

The way the law works now, unfortunately, we don't have enough beds. What happens is the person gets detained and the court system says return in a couple weeks and we will dispose of whether you are here legally. For the most part, they don't show up for court. This amendment will end that practice of catch and release, and I congratulate the Department for having worked hard to try to do this with the resources they presently have.

In addition, this amendment will fully fund the commitment that we as a Congress made at least 2 years ago now to put into place the necessary hard fence and the virtual fence so that we know who is crossing the border, or when someone is crossing illegally, and we can stop, as well as possible, those who attempt to enter illegally. We know we need hard fencing in urban areas and we need virtual fencing along the less populated areas. We put out a plan and hired a contractor to put up the virtual fencing. This amendment guarantees that that virtual fencing, which involves a lot of electronics and air observation through Predators and the equipment necessary, such as helicopters and vehicles, will enable the people on the ground to apprehend these individuals who come in illegally where the crossing occurs, and it involves the necessary resources and capital investment to accomplish all of that, which is absolutely critical.

It has the capital resources in it necessary to get the job done of protecting our borders, and the American people, if this amendment passes, will be able to look at the dollars that have been put into the pipeline, which will accomplish what is the first thing the American people want relative to immigration reform, which is secure borders.

Homeland Security—have what they need to respond to these requests.

To that end, one of the elements of the amendment that has been offered here authorizes the expenditure of funds for the specific purpose of improving the reliability of the basic pilot program and associated programs of the Federal Government that would respond to State inquiries. Obviously, my preference is that the Federal Government undertake that ourselves. Our responsibility is to form the immigration laws and secure the border. Having failed to pass legislation, they can help our citizens around the country by having the most robust database possible that is easy to access and, therefore, States and employers throughout the States can take advantage of.

The only other thing is that I support this amendment because it includes many of the features that were part of the immigration bill that almost everybody agreed with. What you heard in the debate was that we all agree we need to secure the border, enforce the laws, return to the rule of law, but—there was always a "but" and different people had different reasons they didn't want to support the bill. But the bottom line was that almost everybody here supported the essential enforcement features.

The Department of Homeland Security appropriation bill, therefore, is the appropriate place to include funding for the execution of the laws that currently exist and, almost without exception, this amendment does not add new authority or programs for enforcement but rather identifies areas in which enforcing existing law would be enhanced through greater capability achieved through the expenditure of funds that could, among other things, hire more personnel or in other ways make the system more robust.

Here is one specific example: Most folks like to refer to securing the border, and the symbol of that is the hiring of more Border Patrol. That is fine; we need them. But we also know that 40 percent of illegal immigrants in the United States didn't cross the border illegally. They came here on visas and then overstayed their visas illegally. The question is, what can we do to enforce our visa policy, as well as what can we do to secure the border?

This bill focuses on that visa overstayer problem and provides funding for the kind of particular investigators and agents for Immigration and Customs Enforcement that would ordinarily be looking at that problem. In addition, it explores ways in which the entry-exit system can be implemented and we can understand who has overstayed their visas so that can be enforced.

There is much else in this amendment that is good policy and that backs up that policy by the expenditure of funds. The $3 billion figure in here is, very roughly, an approximation of what the immigration bill that we debated provided for, minus the implementation of a couple of programs, the biggest one of which was the employee verification system. That system obviously failed along with the rest of the immigration bill. That was a pretty expensive item.

You will recall that we had mandatory spending of $4.4 billion—money that would have been collected from fines and fees. The $3 billion here represents the bulk of what that money would have been spent on, minus the employee verification system and a few other odds and ends.

That is the explanation for the particular amount of funding in the bill. I hope our colleagues will think carefully about this amendment. Its purpose is good. I think its execution is good. It is on the right bill. What it does that is a bit troublesome to some Members is provide some authorization, though that is not the primary element; it would not be the first time we provided authorization on an appropriations bill, but I can see there is some of that in here. The other aspect is the emergency funding nature. One way or another, we are going to have to get the funding to do the things the American people have insisted on. I have no objection to doing this as emergency funding. If we can fund $100 billion for the Iraq war, for example, I think we can fund $3 billion to secure our own border. If the loss of the immigration bill a month ago taught me anything, it was that the American people are very skeptical that we are committed to enforcing the law. I believe until we demonstrate to them a seriousness of purpose by actions rather than words, by the appropriation of money and by the expenditure of that money on things that they can see make a difference in enforcing immigration policy, they are not going to give us the green light to adopt a more comprehensive immigration reform bill. That is why I am supportive of this amendment as the next step toward solving the problem. I think we want to solve it. I think this is a step in that direction and I, therefore, urge my colleagues to support the legislation.

Mr. COCHRAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I filed earlier a number of amendments. I want to talk about some of those and why I think that they are important. I am pleased to say many of them have been included, all or in part, in the Graham-Gregg-Kyl-McConnell amendment that I have cosponsored. I think, in effect, it represents a positive step to creating a lawful system of immigration, which I believe we owe to the American people. They expect that.

What good is it for us to pass new ideas, new laws, and new provisions concerning immigration if they will not be enforced any better than those we have had before? That is the real rub, the real problem we have. That was my fundamental concern and objection to the comprehensive bill that failed to pass a few weeks ago. It would not have done the job, it would not have been effective, and it did not accomplish what we need to accomplish.

I want to share some ideas about the amendments that I have offered and why they are important. I believe Senator KYL said that we have broad bipartisan support for this. There was some belief that if enforcement amendments are passed, then some people would never confront the other aspects of immigration that others believe need to be confronted. I think the truth is that people tried to hold hostage enforcement in order to gain support for a new idea of immigration, and an amnesty, or a legalization process that the American people didn't agree to. It didn't work. So let me share a few thoughts that I think are important with regard to having a good legal system for our borders.

First, we have to have more barriers, more fencing. The funding for the fencing that we asked for—the 700 miles of fencing—would be included in the amendment that has been proposed, offered, and called up. That is a good step in the right direction. I will offer separately an amendment asking the GAO—our Government Accountability Office—to analyze the cost. The cost factor that I have heard is about $3.2 million per mile for the fence. That exceeds my best judgment of how much that I think it ought to cost to build a fence based on my experience of building a fence in the country in the past. Fences usually do not cost millions of dollars but, this fence on the border is going to cost a lot of money. Yes, we need a lot of fencing on the border, and maybe double and triple fencing in some areas. We need high-tech cameras, and that will run the cost up. But sometimes you get the impression that the people who don't believe in fencing are running the cost up so high that maybe the American people will change their mind about the fence. We know the fence at San Diego was a great success. People on both sides of the border appreciate it. What was a rundown, crime-prone area on both sides of the border in San Diego is now making economic progress, and illegal immigration and crime in that sector is way down. Putting up a strong fence is the right thing for us to do and we must do it if we are serious about enforcement.

I ask for commonsense purposes, tell me how we can have enough border agents to cover 1,700 miles for 24 hours a day, 7 days a week? Are they just going to stand out there all day and all night? We need barriers that will multiply the Border Patrol officer's capability to respond in an effective way to

apprehend those who break into the country.

Through a combination of these efforts, we can get to the point where we go from an open border to a border that people understand to be closed, and, as a result, we could see a reduction in the number of people who attempt to come into our country illegally.

I am pleased that a good part of the State and local law enforcement provisions I have provided for will be included in the amendment. I am pleased that a good part of the National Guard provisions I have offered, including continuing Operation Jump Start, will be included, and the criminal alien provisions dealing with removing those aliens who have been convicted of crimes are deported.

I am pleased that we are moving towards ensuring that illegal entrants will be prosecuted when they come into the country illegally. This can be done by expanding the Del Rio, TX, zero-tolerance policy to other areas of our border so that illegal aliens who come across the border are not just met and greeted, given free meals, and taken back home, but actually are convicted of the crime that they committed when they came across the border illegally. We have seen good results from that program. And there are some other provisions that are important.

I have filed three amendments dealing with the fence. The first deals with a GAO study of the cost of the fencing. We need to know how much money has been spent thus far—there is a lot of confusion out there—how much fencing is now in place after all the money we have spent, how much it is costing and will cost the American taxpayers in the future, and whether there are better techniques and procedures by which we can build more fencing for less cost faster without significantly sacrificing quality. That is what that study would include. The Government Accountability Office regularly evaluates those kinds of issues, and I believe they will give us a valuable report that will help us in the future.

A second amendment calls for full funding of the fencing.

The Secure Fence Act of 2006 that I offered, which was signed into law, requires 700 miles of fencing. This amendment which I offered would fully fund the 700 linear miles of southern border fencing required by providing $1.548 billion to be used for the construction of topographical mile 371 through 700. That is what the law requires.

The Congressional Research Service and the Department of Homeland Security have told us that 700 linear miles in the act will actually require more miles topographically; so the 700 linear miles becomes close to 854 topographical miles. So my amendment will fund the remaining 484 topographical miles of fencing not currently funded for construction by December 31, 2009.

I have drafted this amendment in two ways. One is to be paid for with an across-the-board cut, and the other is designated as emergency spending.

If we are able to adopt the amendment offered earlier today by Senator GRAHAM and others, perhaps that will go a long way to solving the problems I have raised, but, in fact, we could go further and should go further.

My next set of amendments addresses State and local law enforcement's ability to assist Federal law enforcement. My amendment allows for some of the grant moneys appropriated by the bill to go for State and local training exercises, technical assistance, and other programs under the law. This would be a pot of up to $294 million to be used to reimburse State and local expenses related to the implementation of the INA section 287(G) agreements.

Under the Immigration and Nationality Act, State and local governments can sign memorandums of understanding—they are referred to as MOUs in the Government. When two foreign nations do it, they call them treaties. It is about as complex. MOUs are important—with the Department of Homeland Security to have their law enforcement officers trained to work with DHS and to enforce immigration law. That is how State and local people work together. My amendment encourages State and local governments to seek out these agreements and participate in them. The Federal Government needs to welcome State and local law enforcement's assistance at every opportunity, not discourage it.

Alabama was the second State, I am pleased to say, in the Nation to sign such an agreement. We have trained 3 classes of approximately 20 State troopers each for a total of 60 State troopers who are now "cross-designated" to work with the immigration agency, ICE. Each class cost the State of Alabama about $40,000. The State of Alabama had to pay to train their officers in this fashion so they could participate with the Federal Government. They have spent about $120,000 to date to help the Federal Government enforce Federal immigration laws. I think we can do better. We should encourage State law enforcement officers, and we should help fund this partnership program. I have no doubt in my mind that is the right way.

Then I have an amendment that affirms State and local authority and expands of the immigration violators files in the National Crime Information Center, that is not in the Gregg amendment. My amendment would reaffirm the inherent authority of State and local law enforcement to assist the Federal Government in the enforcement of immigration laws.

Confusion among the circuit courts, particularly dicta in a Ninth Circuit decision that appears to be somewhat contradictory to the Fifth and Tenth Circuits, is involved. That has led to a Department of Justice Office of Legal Counsel opinion that questioned some powers of State and local law enforcement. And then the Department of Justice withdrew that opinion. So there is uncertainty—the Presiding Officer knows how uncertain it can get involving the prosecution of cases in multiple jurisdictions—about what the power of local law enforcement is to participate in helping to enforce immigration laws.

The issue is very real. Just today in the Washington Times, there is an article about it. The article is entitled "Virginia eyes plan to deport illegals. Panel suggests a statewide policy." It is being discussed all over the country. They say in that article:

> Other areas, such as the role of local and State police officers in enforcing immigration law, are more ambiguous. It is not clear what the State's role is in enforcing immigration law, Mr. Cleator said.

He is senior staff lawyer for the Virginia State Crime Commission. He said it is not clear what the State role is, and there is some ambiguity, less than most people understand, but there is a perception of ambiguity, and there is some ambiguity. That is why my amendment is needed and important.

My amendment will place additional information in the National Crime Information Center's immigration violators file so that critical information on final orders of removal, revocation of visas, and expired voluntary departure agreements can be readily available to State and local law enforcement officers. They need that information so they can make the right decisions when they apprehend somebody going about their normal business on matters such as speeding and the like.

The National Crime Information Center is the bread-and-butter database of local law enforcement, and they need this information properly inputted into that computer center because the State law officers will be the ones routinely coming into contact with unlawful and deported aliens during the course of their normal duties, such as a DUI charge. They want to know something about them, and the information is not being readily placed in that computer.

Everybody knows that virtually every law enforcement officer in America who stops somebody for an offense—such as DUI, theft, burglary, robbery—runs the suspect's name in the National Crime Information Center, and this is done to determine whether there are pending charges against the suspect, whether the suspect had been convicted of other crimes or if other charges will require that the suspect be held in addition to the charge for the original stop. This is done every day through tens of thousands of inquiries to NCIC. I have discovered that they are not putting a sufficient amount of the immigration violation information in NCIC. We have to do that if we want that a lawful system of immigration to work. If someone doesn't want lawful immigration to work then they will not put that immigration violators' information in NCIC.

Another issue I have raised is Operation Jump Start. This deals with National Guard funding through the end of the year 2008 and improvement in the rules of engagement. There is funding in the Gregg amendment for this matter, but it did not include rules of engagement language.

My amendment, and a similar amendment filed by Senator KYL for another bill, provides the funding, which is $400 million, needed to keep the current National Guard presence of 6,000 guardsmen on the southern border through the end of 2008. The administration's plan is to reduce those forces by half—down to 3,000—by September 2007. So by next summer, they want to have those numbers in half. The National Guard is working to deter illegal border crossings. They are big making a difference there. They are also helping us create the impression that our border is no longer open, that it is closed and it is not a good thing for someone to try to come across it illegally. Removing the National Guard members when they have been so successful would be premature.

If we take all these actions and keep the National Guard at the border, we can help reach that tipping point that I referred to earlier.

In addition, my amendment will allow the National Guard members to have a greater role in stopping illegal aliens along the border. National Guard members should be permitted to aid in the apprehension of illegal aliens crossing the border, at least until a Border Patrol agent comes on the scene. Today, they are only permitted to use nondeadly force for self-defense or the defense of others. So they cannot apprehend illegal aliens that they see crossing the border because they cannot use force unless it is to defend themselves or others. The rules of engagement prevent them from effectively apprehending illegal aliens. My amendment will allow those brave and effective National Guard members to apprehend illegal border crossers until the Border Patrol officer can come to their location.

Another big deal is that we want to make sure criminal aliens are deported. In effect, this language in the amendment I will offer and filed is included in the Gregg amendment. It deals with this problem. The American people understand the need to deport aliens, legal and illegal, who have committed crimes in the United States, crimes that make them deportable. We have laws that say that if you are here in a nonpermanent status and you commit a crime, then you are to be deported; nonpermanent status means that you do not have legal permanent status or citizenship in America. And one of the conditions of that admission is that you don't commit crimes. That is not too much to ask. That is our standard. Most countries have a similar standard.

And criminal aliens should be deported, as a matter of policy, at the end of their State or local criminal sentences. They should not be allowed to slip through the cracks and be released back into society. That is not what our laws call for, but it is happening every day.

Additionally, State court judges should not be allowed to vacate convictions or to remit sentences for the purpose of allowing the alien to escape the immigration consequences of their crimes. Those events that criminal aliens are not being deported and that some criminal aliens are avoiding the immigration consequences of their crimes are of great concern to the American people and Border Patrol agents who are out there working their hearts out.

So my amendment will double the funding—$300 million—that DHS has for the institutional removal program, a program that allows DHS to identify criminal aliens while they are in jail serving State and local sentences. Once they have been identified, they go through the paperwork, and the administrative removal process can be completed while they are in jail. This allows the criminal alien to be put directly into the Department of Homeland Security's custody at the end of their prison term, so that they can be quickly deported.

My amendment expands the criminal alien program by directing that the Secretary of DHS implement a pilot project to evaluate technology to automatically identify incarcerated illegal aliens before they are released. Manpower alone won't get this job done. But if we start correctly with technology, we can make great progress. It can be a big improvement in our current system.

In addition, my amendment ensures that when a criminal alien commits a crime, then the original conviction and sentencing will stand when DHS has determined whether the alien is deportable based on their crimes. This ensures that the trial judge's decision to change the sentence or the judgment of conviction won't be able to undermine the immigration impact of the original judgment.

Madam President, we have a real problem. We have a situation in which 27 percent of the persons in the Federal and State penitentiaries are foreign born—this is an amazing number to me—and they are there for crimes other than immigration—for drugs, fraud, sexual abuse, violent crimes. Large numbers of them—the majority of them—are persons who are not citizens. They have been involved in crimes of a serious nature, and they should be deported when they complete serving their sentence for those crimes. That is what is not occurring.

In fact, we have at this moment, we believe, some 600,000 absconders. These are people who have been apprehended and ordered deported, who are told to report for deportation, or similar orders, and have just simply absconded into the country and never shown up. That is a huge number of illegal aliens that we could eliminate, or reduce, if we could handle this process of taking care of their deportation as soon as they have finished their criminal time in jail.

Currently, the Department of Homeland Security and the Department of Justice have implemented a zero tolerance policy at the Del Rio sector of the border. This policy makes sure that every illegal alien is prosecuted for their illegal entry into the United States. It is a misdemeanor for the first offense. It is a criminal offense, but it is a misdemeanor for the first offense of coming into our country illegally. This policy has decreased illegal entry into the Del Rio sector by 58 percent.

Now, when you consider that last year we arrested 1 million people attempting to enter our country illegally, you get an understanding of what a 58-percent reduction in illegal entries means when that kind of policy is enacted. Though there are nine border sectors, Del Rio is the only one that has such a policy. My amendment would expand the success of the Del Rio project to the two border sectors with the highest crossing rates—Tucson, AZ, and San Diego, CA.

My amendment also requires that until a zero tolerance policy is fully in place, the Department of Homeland Security must refer all illegal entries along the Tucson-San Diego sector to the respective U.S. Attorneys' Offices for prosecution. The U.S. Attorneys' Offices must then provide a formal acceptance or declaration of that prosecution request, which would then allow a record so that Congress can know what all is happening—whether additional resources are needed to fully implement this highly effective policy along the entire border. I think that is a good step in the right direction.

Also, Madam President, we have the question of affidavits of support and their lack of use and my amendment deals with that. Since 1997, most family-based and some employment-based immigrants have to have, and do have, a sponsor that guarantees the immigrant will not become a public charge. In other words, they are admitted into the country, but only on the condition that if they have financial needs, this sponsor will take care of that, not the taxpayers of the United States. That is a legitimate condition, I submit, to place on entrance into the United States.

So the sponsor would enter into a contract with the Federal Government, promising to pay back any means-tested public benefits the immigrant would receive. There are some exceptions—medical assistance, school lunch, Federal disaster relief.

To my knowledge, the Federal Government has never gone after sponsors to ensure they follow through on the commitment they have made. My amendment will require a study to be done by the Government Accountability Office to determine the number

of immigrants with signed affidavits of support that are receiving or have received Federal, State, and local benefits when those immigrants really are not eligible and should have turned to their sponsors for support. A GAO study is needed to determine how much revenue the Federal Government could collect if they enforced these contracts and insisted that the individual who sponsored the person into the country actually pays what they are supposed to pay.

We need to preserve means-tested public benefits for those who are truly needy. We don't have enough money to take care of all the people in our country and shouldn't have to take care of people when they have a sponsor who promised to take care of them and promised that the sponsors would pay back the money for any benefits that the immigrants received.

So those are some of the amendments I offered. There is much that we can do to make our system of immigration at the border more effective. I would just cite that it is a matter of national security. We absolutely know that we have many people who simply want to come to America to work and don't want to cause any attack on the United States, and they are good people. They simply would like to make more money, which is available in the United States, than if they stay in their home country. But we also know that since we are not able to accept everyone who would like to come to America, we have to have rules about who can come and who cannot come and those we let come have to obey our laws.

One of the first and toughest rules should be that we don't allow people to come here who are terrorists, or have terrorist connections that could threaten our country.

Next, we need to ask ourselves how many persons should come in legally, and under what conditions, what kind of skills and abilities and education level and language skills they should have. That should be part of a good and effective immigration policy.

I will just say, however, that any such rules are absolutely worthless if we have a wide open system where people come across illegally on a regular basis and they know they have a high probability for success to come here illegally. Indeed, we know they do because we have about 12 million people here illegally.

So those are some steps I suggest we can take that will improve our legal system. I am pleased that a number of those will be included in the Gregg-Graham amendment and will not require a separate vote.

I hope we will take this responsibility seriously. I see no reason we should not undertake the actions that I have suggested, which have bipartisan support in the Congress. I hope they will not become part of some grand agreement that everything else that we can't agree on has to be a part of it. In other words, these provisions, which I think would have broad bipartisan and public support, these provisions should not be used as a vehicle to try to drag on things that people don't agree with—certainly not at this time.

So I support these amendments. I am glad we do have the Graham-Gregg-McConnell-Kyl amendment on the floor, and I support that. And I would ask these amendments be considered in due course.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. MCCASKILL). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Madam President, before the Senate, I understand, is a Graham amendment dealing with border security. Then there is a second-degree amendment that has been offered on top of that which effectively is where we are at the present time. I would like to make a few comments about this whole issue that has been brought up by Senator GRAHAM in terms of the security aspects at the border.

Those of us who supported a comprehensive program on immigration reform supported strong border enforcement because we know there are 400,000 or 500,00 people who have come across the border, minimally, a year. We don't know their names. We don't know where they go. They disappear into American society. There is no question, on a matter dealing with homeland security, we have to be serious about dealing with our borders. We understand that.

That is why it is so interesting to me, when I saw we had that opportunity 2 years ago, we had a great deal of fuss on the other side about building a fence along the border and then, after they got their vote, the Republicans never funded that particular program.

When we had a chance a few weeks ago to do something on comprehensive border control, again the Republicans, the other side, voted no; they voted it down. Now we have the proposal to try to, I guess, make them politically OK among the voters. We know this issue of undocumented and illegal immigration is a complex one, is a difficult one.

We know the primary reason people come across the border down in the Southwest is because of the magnet of jobs in the United States. This amendment does nothing about the magnet of jobs. We should not delude ourselves, if we say we are going to support this particular proposal and then not deal with what is the basic cause of the hundreds of thousands of people who come here, and that is the magnet of jobs. This amendment doesn't deal with the magnet of jobs. Maybe it has a good political ring to it out there on the hustings, that we are doing something, but as we have seen time and time again, as long as we are not going to deal with the magnet of jobs, the efforts we have on the border—we can build the fences, people have ladders to go over them; or you can build fences and people will burrow and go underneath them—as long as you have the powerful magnet of jobs, the efforts will fail.

We are going to have a vote on this issue, although I, for one, believe having strong border security is a key aspect of having comprehensive reform. That is why a number of us are going to support an alternative to the Graham amendment, an alternative that recognizes, No. 1, this is a complex problem—we are for border security and control, to the extent we can—but, No. 2, that we have a situation affecting millions of Americans in agriculture and that is, if we are going to have border control we are going to have to be able to provide agricultural workers. That is why I hope the Senate will consider an amendment which will have the border control provisions but also have what is called the AgJOBS provisions that will address what is the need in agricultural America.

Without it, as we have heard so eloquently from Senator FEINSTEIN, as we heard from Senator LARRY CRAIG, we are going to have devastation in major parts of our country.

If you are going to have border security, you are going to have to have some way for these workers to get in. The AgJOBS bill is the bill that has had over 60 Members of the Senate who have been supporters of that program. That seems to me to begin to make a good deal of sense.

Recognize, in dealing with this whole issue in a comprehensive way, the most vulnerable people inside our borders, those individuals who are here and are undocumented in so many instances are young people, brought here through no fault of their own because their parents brought them here when they were under 16 years of age, who are here for more than 5 years, serving 2 years in the military, graduating from the high schools of this country—it is called the DREAM Act.

I see my friend and the principal spokesperson and sponsor of that, the Senator from Illinois, Senator DURBIN, on the floor. He speaks so well to this issue. When we have the amendment before the Senate, I will review some of the great, important successes of many young individuals who came here undocumented and have worked long and hard and have graduated from high school, which is no mean feat when you have more than a 50-percent dropout rate among the Hispanic community. The fact that these individuals are here, want to be part of the American dream, want to contribute to our Nation—the DREAM Act gives them the hope and opportunity for the future, which so many who have come here as

government officials on the gulf coast to talk to each other, to get the public assistance, to rescue people in danger. This massive failure was so bad that some emergency officials on the gulf coast were forced to resort to runners to communicate with their first responders in the field.

Think of that. Here we are in the 21st century, and this great American Nation that has spawned a revolution in global communications technologies, where in a catastrophic crisis, our first responders, whose duty it is to protect us, had to resort to communications techniques that we thought we had left behind on the battlefields of the Civil War, and that was to resort to runners.

This amendment would provide the $100 million for this emergency grant program created in the 9/11 bill. The funding would come from a small, across-the-board cut in all other Department of Homeland Security programs. That is the only way we can think fairly to do it. It is real small, about a quarter of 1 percent of the DHS budget, to be exact 0.27 percent, a small amount to shift into a program that is necessary to save lives when disaster strikes.

It is important to note that these funds will be provided to States only after the Office of Emergency Communications in the Department of Homeland Security has approved statewide interoperability communications plans so we are not just going to have city A or fire department B or ambulance company C apply and get their own grants. You have to be part of a plan in every State.

I note again the $400 million in dedicated funding for this program that was provided for in the Senate-passed and House-passed budget resolution earlier this year in anticipation of this new program. Perhaps because the 9/11 bill that has just been completed in conference was not finished when the Appropriations Committee met to adopt this Homeland Security appropriations bill, the committee did not include any funding for interoperability communications.

House appropriators did include $50 million to start the program. Now the Senate must do its part.

We owe it to our first responders, the men and women whose duty it is to protect us and all the people they protect in cities and towns across the Nation, to help them create the kinds of communications systems that will enable them to talk to each other in crisis so they can react swiftly, efficiently, and effectively when the alarm bell rings and duty calls them to respond.

At the appropriate moment, when it is possible to do so, Senator COLLINS and I will introduce an amendment to achieve the purposes I have stated.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, before the Senator from Connecticut leaves the floor, I appreciate his leadership on the 9/11 Commission recommendations conference report and the bill generally and, of course, the work he has done on the other conference report, the only two we have had to speak of, on ethics and lobbying reform. He has been essential to moving these things along. We have approached these two measures on a very bipartisan basis which is, I am confident, the reason we were able to get them to the floor. The work of the Senator from Connecticut has been exemplary.

Mr. LIEBERMAN. I thank the majority leader.

Mr. REID. I wish a number of things. One of the things I wish is that we could legislate the way I remember the Senate legislating. There have been editorials written, there was a cartoon this morning in the Washington Post, about all the many filibusters led by Republicans. We came to our first appropriations bill. We have two individuals who are historic in their knowledge of the Senate, Senator BYRD and Senator COCHRAN. I have lamented with my friend from Mississippi on a number of occasions how we would like to follow regular order. We try to do that as much as we can.

There are a number of ways to kill legislation. One is to get on the floor and talk forever. That is the old-fashioned filibuster. The other way is to do it by diversion, other ways. That is what we have before us today. We have here a bill dealing with Homeland Security. We all know border security is important, and we know the underlying bill is $2.3 billion more than the President requested, most of that money going directly to border security—3,000 new detention beds, 3,000 new Border Patrol agents. It is a good bill. But my friends who want to not have this bill have now done what would seem almost impossible: They want to relegislate immigration. We have spent about a month on immigration this year, about a month last year, far more than any other issue.

Now we have pending before us an amendment, the Graham amendment, that in effect relegislates immigration.

Of course, there is a piece in there for border security. We all support that. But there are also pieces in that that take away basic rights people have, people who are American citizens. So it is unfortunate we are at this juncture.

I have no alternative, and I have thought of everything I could think of to try to avoid this collision. It is my understanding the Graham amendment is pending; is that true?

The PRESIDING OFFICER (Mr. OBAMA). The Graham amendment is pending.

Mr. REID. The Graham amendment is in violation of Senate rules. It is legislating on an appropriations bill. I raise that as a point of order.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Parliamentary inquiry initially: Is the second-degree amendment the pending amendment or is the Graham amendment pending?

The PRESIDING OFFICER. Both amendments are pending.

Mr. GREGG. Is the majority leader's motion to both amendments?

The PRESIDING OFFICER. The point of order goes to the underlying first-degree amendment.

Mr. GREGG. It is a point of order that this is legislating, this is the rule XVI point of order; is that correct?

Mr. REID. Yes.

Mr. GREGG. I raise the defense of germaneness with respect to the pending amendment.

The PRESIDING OFFICER. The Chair is not aware of an arguably legislative provision in the House bill, H.R. 2638, to which amendment No. 2412, offered by the Senator from South Carolina, could conceivably be germane.

Mr. GREGG. So the amendment is germane?

The PRESIDING OFFICER. The Chair does not believe that the defense of germaneness is appropriately placed at this time.

Mr. GREGG. Mr. President, I disagree with the ruling of the Chair and, therefore, I appeal the ruling of the Chair. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. GREGG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I know we are not in debate, but I wanted to inform Senators, there has been an evacuation order issued on the Hart and Dirksen buildings. We are going to go ahead and start the vote, but when the buildings allow the Senators to come, we will make sure they have an opportunity to vote. We are not going to cut anybody off because they are locked in a building someplace.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I would like 3 minutes to quickly point out where we are.

The PRESIDING OFFICER. Is there objection?

Mr. REID. When you finish, I won't need as much time as you. I will take 2½ minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. So our colleagues understand the lay of the land, because it is a fairly complicated parliamentary situation, the Graham amendment, which increases funding for Border Patrol by $3 billion, I would point out that the majority leader, I believe, misspoke when he said the extra $2.2 billion in this bill went to border security. The extra $2.2 billion in this bill, the majority of it exceeds the President's request

in the area of first responders, and that is why we did not move that money out of the first responders to fund this. This is in addition to the funding in this bill to fully fund 23,000 Border Patrol agents, 45,000 detention beds, the virtual fence, the hard fence, and to make sure there are enough ICE enforcement officers. So it is a major initiative in the funding area.

There is also authorizing language in here. It is the authorizing language which I guess the majority leader has the most concerns about. But that is the underlying bill. The question before the body is, as I understand it, the underlying bill, probably because the authorizing language may not be germane. This will be a vote basically on the issue, in my opinion, of whether you want to increase funding for border security by $3 billion, fully funding what is necessary in order to make the border secure, including undertaking specific authorizing language which we think is important in order to give the Border Patrol and ICE agents the necessary tools they need in order to remove people from this country who have come to this country illegally or have done illegal acts while they are here. This is essentially a vote on the underlying amendment.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I have expressed my affection for my friend from New Hampshire on many occasions. He is a wonderful Senator. I am very aware of his great record of public service—Congressman, Governor, Senator. But the statement he made is wrong. This is not a vote on immigration. This vote we are going to take today, if the Chair is overturned, will set a precedent for all future appropriations bills, all of them, lowering, if not eliminating, the legislation on appropriations threshold. So this will mean any appropriations bill that comes through here, you can put anything on it. Some of us will remember—I know Senator COCHRAN will remember—I raised a point of order against something that Senator Helms did, and it was one of the biggest mistakes I made because we overruled the Chair. It took years for us on a bipartisan basis to go back to where we were.

On appropriations bills, you will be able to put in an appropriations bill anything you want. We will get back to the days of appropriations bills just putting anything you want in them. One of the good things about the appropriations process is you should not be able to legislate on an appropriations bill. That is what this is all about.

I also say to my friend from New Hampshire and all those people who believe this is a way to vote on immigration, it is not. It will lower the standards here in the Senate significantly. I would say, the funding aspect, none of us have any problem with that. We agree. That is one of the things I said publicly, that I appreciated the President when we had our immigration debate. He provided money that was emergency, direct funding of $4.4 billion for the border. I supported that. It allowed us to pick up more votes. It was a very important thing. I applauded the President for having done that. I told the President after that legislation fell through how much I appreciated his leadership.

But we need some leadership. This is going to lower the standards of the appropriations process and the Senate. We accept the funding measure. We would agree right now. Do it by unanimous consent. We agree to that. Then let's have the immigration debate some other time. We have spent 2 months on it already. Isn't that enough?

Mr. President, I want all Senators to know, Democrats and Republicans, if the Chair is overturned, this will set a precedent for all future appropriations bills, lowering, most likely eliminating, the legislating on appropriations threshold. We should not go down that road. I want to pass some of these appropriations bills. We want to get things done. Is this the picture we are going to have?

I will use leader time at this time. I came here this morning. I felt so good because we passed by unanimous consent the Wounded Warrior legislation. The distinguished Republican leader said: Well, why don't you add to that the pay raise for the troops? I said: It is OK, we will do that. I walked out of here—if I had some muscles, Mr. President, I would flex them because we really did well this morning. But the fact is, this afternoon we are back in the bog trying to claw through legislation we should not have to.

We have filed cloture 45 times this year. Why? For this bill we have now on the Senate floor, Homeland Security appropriations, we had to file cloture on a motion to proceed to it. That is hard to comprehend, but we did. We had to file cloture.

I do not want to file cloture on this bill because the first thing that would happen is people would come and say: I have not had a chance to vote on an amendment.

So I don't want to file cloture on this bill. I want people to have the opportunity to offer amendments and vote on them. But let's try to stay within the rules. This is legislating on an appropriations bill.

If my friends on the other side of the aisle want to overrule the Chair, that is really too bad and that will go into part of the writing where people will talk about how this Republican minority—I understand our majority is pretty thin: 50 to 49. Come September, it will be 51 to 49. That is pretty close. So it is not an issue where we are bulling our way over and through everybody. Every vote we take here is close. But this is not the way to go.

This may make everybody happy, but then there will be no appropriations bills. We will just do a big omnibus at the end of the year and do away with the appropriations process because now it does not matter what bill we bring up—we can bring up the Veterans' Administration, the VA, Military Construction appropriations bill, and with that, we can put anything in that we want that does not have anything to do with the purview and the scope of that bill. That is what people are getting into here. It is a shame.

Mr. President, I ask the vote be started.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Shall the decision of the Chair stand as the judgment of the Senate?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. LOTT. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK) and the Senator from Arizona (Mr. MCCAIN).

The result was announced—yeas 52, nays 44, as follows:

[Rollcall Vote No. 277 Leg.]

YEAS—52

Akaka	Feinstein	Nelson (NE)
Baucus	Harkin	Obama
Bayh	Inouye	Pryor
Biden	Kennedy	Reed
Bingaman	Kerry	Reid
Boxer	Klobuchar	Rockefeller
Brown	Kohl	Salazar
Byrd	Landrieu	Sanders
Cantwell	Lautenberg	Schumer
Cardin	Leahy	Stabenow
Carper	Levin	Stevens
Casey	Lieberman	Tester
Cochran	Lincoln	Voinovich
Conrad	McCaskill	Webb
Dodd	Menendez	Whitehouse
Dorgan	Mikulski	Wyden
Durbin	Murray	
Feingold	Nelson (FL)	

NAYS—44

Alexander	DeMint	Lugar
Allard	Dole	Martinez
Barrasso	Domenici	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Roberts
Bunning	Graham	Sessions
Burr	Grassley	Shelby
Chambliss	Gregg	Smith
Coburn	Hagel	Snowe
Coleman	Hatch	Specter
Collins	Hutchison	Sununu
Corker	Inhofe	Thune
Cornyn	Isakson	Vitter
Craig	Kyl	Warner
Crapo	Lott	

NOT VOTING—4

Brownback	Johnson
Clinton	McCain

The PRESIDING OFFICER. The Senate sustains the decision of the Chair.

Mrs. MURRAY. Mr. President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, I appreciate the vote turning out the way it did. First of all, I want the record to clearly reflect that the author of this legislation, my friend from South Carolina,

LINDSAY GRAHAM, offered it because he thought it was the right thing to do. He has very strong feelings about a lot of issues and he expresses them. One of those he feels strongly about is the issue of immigration. He offered this amendment in good faith, and I want everybody to know that is how I feel.

Procedurally, though, sometimes here we get in the way of each other. In fact, that is what has happened. What I would like to do is ask unanimous consent that the money portion—the portion of the Graham amendment that funds border security for all the things he and Senator GREGG laid out—that we accept that by unanimous consent.

My friend from New Hampshire wants to look at the legislation they have. I am hopeful that sometime tonight I can offer that in the form of a unanimous consent request. I wish to make sure everybody on both sides has the opportunity to look at the legislation. In effect, I again state simply it would give more money for border security. I will not harp on this, other than to say we in Nevada have a tremendous problem. We arrest illegals; and there is no place to put them. So they are let loose. This money would allow us to build more detention beds, hire more border security officers, and it will add the first part of the legislation that is absolutely necessary—that we do something about immigration. We always talk about border security wherever any of us go. But then there are other things that would not happen today with this legislation.

Hopefully, within the next hour or so, when Senator GREGG has had a chance to look at that—and I will clear it with Senator KENNEDY and others—we can, by unanimous consent, pass that portion of the bill dealing with financing border security.

I yield the floor at this time and, again, express my appreciation for the bipartisan vote that we had.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, we are on the verge of an important bipartisan accomplishment to actually seriously begin to secure the border. I thank Senator GRAHAM for his amendment. I thank the majority leader for his willingness to pass that portion of it that clearly is directed at border security.

I think once we have had an opportunity to actually read the amendment, which Senator GREGG and his staff and Senator GRAHAM and his staff are doing, we will have an opportunity to do something important for the country later tonight.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, I am not sending this up in the form of an amendment. I want this to be placed in the RECORD to indicate what we would like to have accepted by unanimous consent. If there is an agreement on both sides, we will propose the amendment together. This is not an amendment, but I ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

(Purpose: To appropriate an additional $3,000,000,000 to improve border security)

At the appropriate place, insert the following:

TITLE BORDER SECURITY ENHANCEMENTS

For an additional amount for "U.S. Customs and Border Protection, Salaries and Expenses", $1,000,000,000, to hire, train, support, and equip additional Border Patrol agents and Customs and Border Protection Officers and for enforcement of laws relating to border security, immigration, customs, and agricultural inspections, and regulatory activities related to plant and animal imports.

For an additional amount for "U.S. Customs and Border Protection, Border Security Fencing, Infrastructure, and Technology," $1,000,000,000, to remain available until expended.

For an additional amount for "U.S. Customs and Border Protection, Air and Marine Interdiction, Operations, Maintenance, and Procurement", $100,000,000, to remain available until expended.

For an additional amount for "U.S. Customs and Border Protection, Construction", $150,000,000, to remain available until expended, for construction related to additional Border Patrol personnel.

For an additional amount for "U.S. Immigration and Customs Enforcement, Salaries and Expenses", $700,000,000, to remain available until expended, to hire additional agents to enforce immigration and customs laws, procure additional detention beds, carry out detentions and removals, and conduct investigations.

For an additional amount for "Federal Law Enforcement Training Center, Salaries and Expenses", $25,000,000, to remain available until expended, to train newly hired Border Patrol agents and other immigration and customs personnel funded in this amendment.

For an additional amount for "Federal Law Enforcement Training Center, Acquisitions, Construction, Improvement, and Related Expenses", $25,000,000, to remain available until expended, to provide facilities to train the newly hired Border Patrol agents and other immigration and customs personnel funded in this amendment.

These amounts are designated as an emergency requirement pursuant to section 204 of S. Con. Res. 21 (110th Congress).

Mr. GREGG. Mr. President, if I can ask the leader a question, as I understand it, we are going to try to work out an agreement on the funding and the language which is behind the funding that didn't authorize the language——

Mr. REID. That is directed at border security, yes.

Mr. GREGG. Is that the money that increases border agents from 23,000 up to 30,000 and increases the number of beds to 45,000 and covers the fence, the virtual fence, and the number that funds ICE?

Mr. REID. We will take a look at your language, and you can look at ours, but the answer to your question is yes.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I think we are all concerned that we get border security right. The Graham amendment offered us that opportunity. It looks like we may get there tonight.

Let the Senate understand there is a Catch-22 to what we are doing. While Americans want their border security—my guess is what the majority leader is proposing we adjust to will pass by the unanimous support of this Senate. The Catch-22 is that American agriculture is now in crisis, in part because we have failed to pass an immigration bill that addresses their guest worker need problem and the border closes and the human labor flow stops. We want it stopped. We want the illegal movement to stop, but we need a legal system tied to this to solve a problem.

Last agricultural season, underemployed by 25 percent, $3 billion lost at the farm gate, the consumer picked up the bill. Then we struggled mightily to solve the problem, and we could not. Now we are heading into another harvest season, with 35 percent underemployment, with a projected $5 billion to $6 billion loss in American agriculture—fruit, vegetables, and nuts left hanging on the trees and oranges rotting in the orange groves.

The Senator from California and I have said, please, help us a little bit and reinstate a guest worker program with border security; give us a 5-year pilot temporary program to solve a near disastrous problem for American agriculture. We fumble through and we cannot do it. So what are America's farmers doing—the ones who can afford to? They are taking their capital and equipment and they are moving to Mexico and Argentina and Brazil and Chile. America's investment will move south of the border.

Here we are now, 60 percent dependent on foreign oil to fuel our cars. Are we going to become 60 or 70 percent dependent on foreign countries to produce our fruits and our vegetables? If this Senate cannot get it right within a decade, that is where we will be—maybe even less time than that.

So while we debate border security—and while we are all for it, and while I have been aggressive in moving legislation with Senator BYRD, starting 2 years ago, to tighten our borders—always in my mind tied to that was reform of the guest worker program and getting a workforce for American agriculture that was legal, that was transparent, that came and worked and went home. But we can't do that. We would not do it. We refuse to do it because of grounds of political intimidation.

Shame on us if we destroy American agriculture because we cannot get it right. So the Senator from California and I are left with no alternative. Do we object to unanimous consent to secure the border? Of course we would not. We cannot and we should not. But we will ask this Senate to vote time and time again and either say you are for American agriculture or you are against it.

(i) the alien's continued presence at all future immigration proceedings;

(ii) the alien's compliance with any future order or removal; and

(iii) the public safety or national security.

(C) CONTINUED EVALUATION.—The Secretary shall evaluate regularly the effectiveness of the program, including the effectiveness of the particular alternatives to detention used under the program, and make such modifications as the Secretary deems necessary to improve the program's effectiveness or to deter abuse.

(4) CONTRACTS AND OTHER CONSIDERATIONS.—The Secretary may enter into contracts with qualified nongovernmental entities to implement the secure alternatives program and, in designing such program, shall consult with relevant experts and consider programs that have proven successful in the past.

SEC. ___10. LESS RESTRICTIVE DETENTION FACILITIES.

(a) CONSTRUCTION.—To the extent practicable, the Secretary shall facilitate the construction or use of secure but less restrictive detention facilities for the purpose of long-term detention where detainees are held longer than 72 hours.

(b) CRITERIA.—In pursuing the development of detention facilities pursuant to this section, the Secretary shall—

(1) consider the design, operation, and conditions of existing secure but less restrictive detention facilities; and

(2) to the extent practicable, construct or use detention facilities where—

(A) movement within and between indoor and outdoor areas of the facility is subject to minimal restrictions;

(B) detainees have ready access to social, psychological, and medical services;

(C) detainees with special needs, including those who have experienced trauma or torture, have ready access to services and treatment addressing their needs;

(D) detainees have frequent access to programs and recreation;

(E) detainees are permitted contact visits with legal representatives and family members; and

(F) special facilities are provided to families with children.

(c) FACILITIES FOR FAMILIES WITH CHILDREN.—In any case in which release or secure alternatives programs are not a practicable option, the Secretary shall, to the extent practicable, ensure that special detention facilities for the purposes of long-term detention where detainees are held longer than 72 hours are specifically designed to house parents with their minor children, including ensuring that—

(1) procedures and conditions of detention are appropriate for families with minor children; and

(2) living and sleeping quarters for children under 14 years of age are not physically separated from at least 1 of the child's parents.

(d) PLACEMENT IN NONPUNITIVE FACILITIES.—Among the factors to be considered with respect to placing a detainee in a less restrictive facility is whether the detainee is—

(1) part of a family with minor children;

(2) a victim of persecution, torture, trafficking, or domestic violence; or

(3) a nonviolent, noncriminal detainee.

(e) PROCEDURES AND STANDARDS.—Where necessary, the Secretary shall promulgate new standards, or modify existing detention standards, to promote the development of less restrictive detention facilities.

(f) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable in law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does this section create any right of review in any administrative, judicial, or other proceeding.

SEC. ___11. AUTHORIZATION OF APPROPRIATIONS; EFFECTIVE DATE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this title.

(b) EFFECTIVE DATE.—This title and the amendments made by this title shall take effect on the date that is 180 days after the date of the enactment of this Act.

SA 2410. Mr. KERRY (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. IG REPORT ON RISK-BASED GRANT PROGRAM.

Not later than 180 days after the date of enactment, of this Act, the Inspector General of the Department of Homeland Security shall submit a report to the appropriate congressional committees (as defined in section 2(2) of the Homeland Security Act of 2002 (6 U.S.C. 101(2))) which assesses the criteria the Department uses in its grant programs to determine the risk of an applicant to a terrorist attack and whether it is following Congressional directive related to the distribution of funds based on risk. The report shall include—

(1) an analysis of the Department's policy of ranking states, cities, and other grantees by tiered groups;

(2) an analysis of whether the grantees within those tiers are at a similar level of risk;

(3) examples of how the Department applied its risk methodologies to individual locations;

(4) recommendations to improve the Department's grant programs; and

(5) any other information the Inspector General finds relevant.

SA 2411. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 37, line 7, insert ", whether or not located in high-threat, high-density urban areas," after "code)".

SA 2412. Mr. GRAHAM (for himself, Mr. GREGG, Mr. SESSIONS, Mr. KYL, Mr. CORNYN, Mr. MCCONNELL, Mr. DOMENICI, Mr. MCCAIN, Mr. SUNUNU, Mr. MARTINEZ, Mr. COLEMAN, and Mr. SPECTER) proposed an amendment to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; as follows:

At the end, add the following:

DIVISION B—BORDER SECURITY

TITLE X—BORDER SECURITY REQUIREMENTS

SEC. 1001. SHORT TITLE.

This division may be cited as the "Border Security First Act of 2007".

SEC. 1002. BORDER SECURITY REQUIREMENTS.

(a) REQUIREMENTS.—Not later than 2 years after the date of the enactment of this Act, the President shall ensure that the following are carried out:

(1) OPERATIONAL CONTROL OF THE INTERNATIONAL BORDER WITH MEXICO.—The Secretary of Homeland Security shall establish and demonstrate operational control of 100 percent of the international land border between the United States and Mexico, including the ability to monitor such border through available methods and technology.

(2) STAFF ENHANCEMENTS FOR BORDER PATROL.—The United States Customs and Border Protection Border Patrol shall hire, train, and report for duty 23,000 full-time agents.

(3) STRONG BORDER BARRIERS.—The United States Customs and Border Protection Border Patrol shall—

(A) install along the international land border between the United States and Mexico at least—

(i) 300 miles of vehicle barriers;

(ii) 700 linear miles of fencing as required by the Secure Fence Act of 2006 (Public Law 109–367), as amended by this Act; and

(iii) 105 ground-based radar and camera towers; and

(B) deploy for use along the international land border between the United States and Mexico 4 unmanned aerial vehicles, and the supporting systems for such vehicles.

(4) CATCH AND RETURN.—The Secretary of Homeland Security shall detain all removable aliens apprehended crossing the international land border between the United States and Mexico in violation of Federal or State law, except as specifically mandated by Federal or State law or humanitarian circumstances, and United States Immigration and Customs Enforcement shall have the resources to maintain this practice, including the resources necessary to detain up to 45,000 aliens per day on an annual basis.

(b) PRESIDENTIAL PROGRESS REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, and every 90 days thereafter until the requirements under subsection (a) are met, the President shall submit a report to Congress detailing the progress made in funding, meeting, or otherwise satisfying each of the requirements described under paragraphs (1) through (4) of subsection (a), including detailing any contractual agreements reached to carry out such measures.

(2) PROGRESS NOT SUFFICIENT.—If the President determines that sufficient progress is not being made, the President shall include in the report required under paragraph (1) specific funding recommendations, authorization needed, or other actions that are or should be undertaken by the Secretary of Homeland Security.

SEC. 1003. APPROPRIATIONS FOR BORDER SECURITY.

There is hereby appropriated $3,000,000,000 to satisfy the requirements set out in section 1002(a) and, if any amount remains after satisfying such requirements, to achieve and maintain operational control over the international land and maritime borders of the United States and for employment eligibility verification improvements. These amounts are designated as an emergency requirement pursuant to section 204 of S. Con. Res. 21 (110th Congress).

TITLE XI—BORDER CONTROL ENHANCEMENTS

Subtitle A—Assets for Controlling United States Borders

SEC. 1101. ENFORCEMENT PERSONNEL.

(a) ADDITIONAL PERSONNEL.—

(1) U.S. CUSTOMS AND BORDER PROTECTION OFFICERS.—In each of the fiscal years 2008 through 2012, the Secretary shall, subject to the availability of appropriations, increase by not less than 500 the number of positions for full-time active duty CBP officers and provide appropriate training, equipment, and support to such additional CBP officers.

(2) INVESTIGATIVE PERSONNEL.—

(A) IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.—Section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3734) is amended by striking "800" and inserting "1000".

(B) ADDITIONAL PERSONNEL.—In addition to the positions authorized under section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended by subparagraph (A), during each of the fiscal years 2008 through 2012, the Secretary shall, subject to the availability of appropriations, increase by not less than 200 the number of positions for personnel within the Department assigned to investigate alien smuggling.

(3) DEPUTY UNITED STATES MARSHALS.—In each of the fiscal years 2008 through 2012, the Attorney General shall, subject to the availability of appropriations, increase by not less than 50 the number of positions for full-time active duty Deputy United States Marshals that assist in matters related to immigration.

(4) RECRUITMENT OF FORMER MILITARY PERSONNEL.—

(A) IN GENERAL.—The Commissioner of United States Customs and Border Protection, in conjunction with the Secretary of Defense or a designee of the Secretary of Defense, shall establish a program to actively recruit members of the Army, Navy, Air Force, Marine Corps, and Coast Guard who have elected to separate from active duty.

(B) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Commissioner shall submit a report on the implementation of the recruitment program established pursuant to subparagraph (A) to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) U.S. CUSTOMS AND BORDER PROTECTION OFFICERS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out paragraph (1) of subsection (a).

(2) DEPUTY UNITED STATES MARSHALS.—There are authorized to be appropriated to the Attorney General such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out subsection (a)(3).

(3) BORDER PATROL AGENTS.—Section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004 (118 Stat. 3734) is amended to read as follows:

"SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL AGENTS.

"(a) ANNUAL INCREASES.—The Secretary of Homeland Security shall increase the number of positions for full-time active duty border patrol agents within the Department of Homeland Security (above the number of such positions for which funds were appropriated for the preceding fiscal year), by not less than—

"(1) 2,000 in fiscal year 2007;

"(2) 2,400 in fiscal year 2008;

"(3) 2,400 in fiscal year 2009;

"(4) 2,400 in fiscal year 2010;

"(5) 2,400 in fiscal year 2011; and

"(6) 2,400 in fiscal year 2012.

"(b) NORTHERN BORDER.—In each of the fiscal years 2008 through 2012, in addition to the border patrol agents assigned along the northern border of the United States during the previous fiscal year, the Secretary shall assign a number of border patrol agents equal to not less than 20 percent of the net increase in border patrol agents during each such fiscal year.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 through 2012 to carry out this section.".

(c) SHADOW WOLVES APPREHENSION AND TRACKING.—

(1) PURPOSE.—The purpose of this subsection is to authorize the Secretary, acting through the Assistant Secretary of Immigration and Customs Enforcement (referred to in this subsection as the "Secretary"), to establish new units of Customs Patrol Officers (commonly known as "Shadow Wolves") during the 5-year period beginning on the date of enactment of this Act.

(2) ESTABLISHMENT OF NEW UNITS.—

(A) IN GENERAL.—During the 5-year period beginning on the date of enactment of this Act, the Secretary is authorized to establish within United States Immigration and Customs Enforcement up to 5 additional units of Customs Patrol Officers in accordance with this subsection, as appropriate.

(B) MEMBERSHIP.—Each new unit established pursuant to subparagraph (A) shall consist of up to 15 Customs Patrol Officers.

(3) DUTIES.—The additional Immigration and Customs Enforcement units established pursuant to paragraph (2)(A) shall operate on Indian reservations (as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452)) located on or near (as determined by the Secretary) an international border with Canada or Mexico, and such other Federal land as the Secretary determines to be appropriate, by—

(A) investigating and preventing the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States; and

(B) carrying out such other duties as the Secretary determines to be necessary.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2008 through 2013.

SEC. 1102. TECHNOLOGICAL ASSETS.

(a) ACQUISITION.—Subject to the availability of appropriations for such purpose, the Secretary shall procure additional unmanned aerial vehicles, cameras, poles, sensors, and other technologies necessary to achieve operational control of the borders of the United States.

(b) INCREASED AVAILABILITY OF EQUIPMENT.—The Secretary and the Secretary of Defense shall develop and implement a plan to use authorities provided to the Secretary of Defense under chapter 18 of title 10, United States Code, to increase the availability and use of Department of Defense equipment, including unmanned aerial vehicles, tethered aerostat radars, and other surveillance equipment, to assist the Secretary in carrying out surveillance activities conducted at or near the international land borders of the United States to prevent illegal immigration.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out subsection (a).

SEC. 1103. INFRASTRUCTURE.

Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended—

(1) in subsection (a), by striking "Attorney General, in consultation with the Commissioner of Immigration and Naturalization," and inserting "Secretary of Homeland Security"; and

(2) in subsection (b)—

(A) by redesignating paragraphs (1), (2), (3), and (4) as paragraphs (2), (3), (4), and (5), respectively;

(B) by inserting before paragraph (2), as redesignated, the following:

"(1) FENCING NEAR SAN DIEGO, CALIFORNIA.—In carrying out subsection (a), the Secretary shall provide for the construction along the 14 miles of the international land border of the United States, starting at the Pacific Ocean and extending eastward, of second and third fences, in addition to the existing reinforced fence, and for roads between the fences.".

(C) in paragraph (2), as redesignated—

(i) in the header, by striking "SECURITY FEATURES" and inserting "ADDITIONAL FENCING ALONG SOUTHWEST BORDER"; and

(ii) by striking subparagraphs (A) through (C) and inserting the following:

"(A) REINFORCED FENCING.—In carrying out subsection (a), the Secretary of Homeland Security shall construct reinforced fencing along not less than 700 miles of the southwest border where fencing would be most practical and effective and provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border.

"(B) PRIORITY AREAS.—In carrying out this section, the Secretary of Homeland Security shall—

"(i) identify the 370 miles along the southwest border where fencing would be most practical and effective in deterring smugglers and aliens attempting to gain illegal entry into the United States; and

"(ii) not later than December 31, 2008, complete construction of reinforced fencing along the 370 miles identified under clause (i).

"(C) CONSULTATION.—

"(i) IN GENERAL.—In carrying out this section, the Secretary of Homeland Security shall consult with the Secretary of the Interior, the Secretary of Agriculture, States, local governments, Indian tribes, and property owners in the United States to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such fencing is to be constructed.

"(ii) SAVINGS PROVISION.—Nothing in this subparagraph may be construed to—

"(I) create any right of action for a State, local government, or other person or entity affected by this subsection; or

"(II) affect the eminent domain laws of the United States or of any State.

"(D) LIMITATION ON REQUIREMENTS.—Notwithstanding subparagraph (A), nothing in this paragraph shall require the Secretary of Homeland Security to install fencing, physical barriers, roads, lighting, cameras, and sensors in a particular location along an international border of the United States, if the Secretary determines that the use or placement of such resources is not the most appropriate means to achieve and maintain operational control over the international border at such location."; and

(D) in paragraph (5), as redesignated, by striking "to carry out this subsection not to exceed $12,000,000" and inserting "such sums as may be necessary to carry out this subsection".

SEC. 1104. PORTS OF ENTRY.

Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Public Law 104-208, is amended by the addition, at the end of that section, of the following new subsection:

"(e) CONSTRUCTION AND IMPROVEMENTS.—The Secretary is authorized to—

"(1) construct additional ports of entry along the international land borders of the United States, at locations to be determined by the Secretary; and

"(2) make necessary improvements to the ports of entry.".

SEC. 1105. INCREASED BORDER PATROL TRAINING CAPACITY.

(a) IN GENERAL.—If the Secretary of Homeland Security, in his discretion, determines that existing capacity is insufficient to meet Border Patrol training needs, Secretary of Homeland Security shall acquire sufficient training staff and training facilities to increase the capacity of the Department of Homeland Security to train 2,400 new, full-time, active duty Border Patrol agents per year for fiscal years 2008 through 2012.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such amounts as may be necessary for each of the fiscal years 2008 through 2012 to carry out this section.

SEC. 1106. INCREASED IMMIGRATION AND CUSTOMS ENFORCEMENT PERSONNEL.

(a) REMOVAL PERSONNEL.—During each of the fiscal years 2008 through 2012, the Secretary of Homeland Security shall increase by not less than 1,000 each year the number of positions for full-time active duty forensic auditors, intelligence officers, and investigators in United States Immigration and Customs Enforcement to carry out the removal of aliens who are not admissible to or are subject to removal from the United States, or have overstayed their nonimmigrant visas.

(b) INVESTIGATION PERSONNEL.—During each of the fiscal years 2008 through 2012, the Secretary of Homeland Security shall increase by not less than 1,000 each year the number of positions for full-time investigators in United States Immigration and Customs Enforcement to investigate immigration fraud and enforce workplace violations.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such amounts as may be necessary for each of the fiscal years 2008 through 2012 to carry out this section.

Subtitle B—Other Border Security Initiatives

SEC. 1107. BIOMETRIC ENTRY-EXIT SYSTEM.

(a) COLLECTION OF BIOMETRIC DATA FROM ALIENS ENTERING AND DEPARTING THE UNITED STATES.—Section 215 (8 U.S.C. 1185) is amended—

(1) by redesignating subsection (c) as subsection (g);

(2) by moving subsection (g), as redesignated by paragraph (1), to the end; and

(3) by inserting after subsection (b) the following:

"(c) The Secretary is authorized to require aliens entering and departing the United States to provide biometric data and other information relating to their immigration status.".

(b) INSPECTION OF APPLICANTS FOR ADMISSION.—Section 235(d) (8 U.S.C. 1225 (d)) is amended by adding at the end the following:

"(5) AUTHORITY TO COLLECT BIOMETRIC DATA.—In conducting inspections under subsections (a) and (b), immigration officers are authorized to collect biometric data from—

"(A) any applicant for admission or any alien who is paroled under section 212(d)(5), seeking to or permitted to land temporarily as an alien crewman, or seeking to or permitted transit through the United States; or

"(B) any lawful permanent resident who is entering the United States and who is not regarded as seeking admission pursuant to section 101(a)(13)(C).".

(c) COLLECTION OF BIOMETRIC DATA FROM ALIEN CREWMEN.—Section 252 (8 U.S.C. 1282) is amended by adding at the end the following:

"(d) An immigration officer is authorized to collect biometric data from an alien crewman seeking permission to land temporarily in the United States.".

(d) GROUNDS OF INADMISSIBILITY.—Section 212 (8 U.S.C. 1182) is amended—

(1) in subsection (a)(7), by adding at the end the following:

"(C) WITHHOLDERS OF BIOMETRIC DATA.—Any alien who fails or has failed to comply with a lawful request for biometric data under section 215(c), 235(d), or 252(d) is inadmissible."; and

(2) in subsection (d), by inserting after paragraph (1) the following:

"(2) The Secretary may waive the application of subsection (a)(7)(C) for an individual alien or class of aliens.".

(e) IMPLEMENTATION.—Section 7208 of the 9/11 Commission Implementation Act of 2004 (8 U.S.C. 1365b) is amended—

(1) in subsection (c), by adding at the end the following:

"(3) IMPLEMENTATION.—In fully implementing the automated biometric entry and exit data system under this section, the Secretary is not required to comply with the requirements of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedure Act) or any other law relating to rulemaking, information collection, or publication in the Federal Register."; and

(2) in subsection (1)—

(A) by striking "There are authorized" and inserting the following:

"(1) IN GENERAL.—There are authorized"; and

(B) by adding at the end the following:

"(2) IMPLEMENTATION AT ALL LAND BORDER PORTS OF ENTRY.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 and 2009 to implement the automated biometric entry and exit data system at all land border ports of entry.".

SEC. 1108. UNLAWFUL FLIGHT FROM IMMIGRATION OR CUSTOMS CONTROLS.

Section 758 of title 18, United States Code, is amended to read as follows:

"SEC. 758. UNLAWFUL FLIGHT FROM IMMIGRATION OR CUSTOMS CONTROLS.

"(a) EVADING A CHECKPOINT.—Any person who, while operating a motor vehicle or vessel, knowingly flees or evades a checkpoint operated by the Department of Homeland Security or any other Federal law enforcement agency, and then knowingly or recklessly disregards or disobeys the lawful command of any law enforcement agent, shall be fined under this title, imprisoned not more than 5 years, or both.

"(b) FAILURE TO STOP.—Any person who, while operating a motor vehicle, aircraft, or vessel, knowingly, or recklessly disregards or disobeys the lawful command of an officer of the Department of Homeland Security engaged in the enforcement of the immigration, customs, or maritime laws, or the lawful command of any law enforcement agent assisting such officer, shall be fined under this title, imprisoned not more than 2 years, or both.

"(c) ALTERNATIVE PENALTIES.—Notwithstanding the penalties provided in subsection (a) or (b), any person who violates such subsection shall—

"(1) be fined under this title, imprisoned not more than 10 years, or both, if the violation involved the operation of a motor vehicle, aircraft, or vessel—

"(A) in excess of the applicable or posted speed limit;

"(B) in excess of the rated capacity of the motor vehicle, aircraft, or vessel; or

"(C) in an otherwise dangerous or reckless manner;

"(2) be fined under this title, imprisoned not more than 20 years, or both, if the violation created a substantial and foreseeable risk of serious bodily injury or death to any person;

"(3) be fined under this title, imprisoned not more than 30 years, or both, if the violation caused serious bodily injury to any person; or

"(4) be fined under this title, imprisoned for any term of years or life, or both, if the violation resulted in the death of any person.

"(d) ATTEMPT AND CONSPIRACY.—Any person who attempts or conspires to commit any offense under this section shall be punished in the same manner as a person who completes the offense.

"(e) FORFEITURE.—Any property, real or personal, constituting or traceable to the gross proceeds of the offense and any property, real or personal, used or intended to be used to commit or facilitate the commission of the offense shall be subject to forfeiture.

"(f) FORFEITURE PROCEDURES.—Seizures and forfeitures under this section shall be governed by the provisions of chapter 46 of this title, relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security or the Attorney General. Nothing in this section shall limit the authority of the Secretary to seize and forfeit motor vehicles, aircraft, or vessels under the Customs laws or any other laws of the United States.

"(g) DEFINITIONS.—For purposes of this section—

"(1) The term 'checkpoint' includes, but is not limited to, any customs or immigration inspection at a port of entry.

"(2) The term 'lawful command' includes, but is not limited to, a command to stop, decrease speed, alter course, or land, whether communicated orally, visually, by means of lights or sirens, or by radio, telephone, or other wire communication.

"(3) The term 'law enforcement agent' means any Federal, State, local or tribal official authorized to enforce criminal law, and, when conveying a command covered under subsection (b) of this section, an air traffic controller.

"(4) The term 'motor vehicle' means any motorized or self-propelled means of terrestrial transportation.

"(5) The term 'serious bodily injury' has the meaning given in section 2119(2) of this title.".

SEC. 1109. SEIZURE OF CONVEYANCE WITH CONCEALED COMPARTMENT: EXPANDING THE DEFINITION OF CONVEYANCES WITH HIDDEN COMPARTMENTS SUBJECT TO FORFEITURE.

(a) IN GENERAL.—Section 1703 of title 19, United States Code is amended:

(1) by amending the title of such section to read as follows:

"SEC. 1703. SEIZURE AND FORFEITURE OF VESSELS, VEHICLES, OTHER CONVEYANCES, AND INSTRUMENTS OF INTERNATIONAL TRAFFIC.";

(2) by amending the title of subsection (a) to read as follows:

"(a) VESSELS, VEHICLES, OTHER CONVEYANCES, AND INSTRUMENTS OF INTERNATIONAL TRAFFIC SUBJECT TO SEIZURE AND FORFEITURE.—";

(3) by amending the title of subsection (b) to read as follows:

"(b) VESSELS, VEHICLES, OTHER CONVEYANCES, AND INSTRUMENTS OF INTERNATIONAL TRAFFIC DEFINED.—";

(4) by inserting ", vehicle, other conveyance, or instrument of international traffic" after the word "vessel" everywhere it appears in the text of subsections (a) and (b); and

(5) by amending subsection (c) to read as follows:

"(c) ACTS CONSTITUTING PRIMA FACIE EVIDENCE OF VESSEL, VEHICLE, OR OTHER CONVEYANCE OR INSTRUMENT OF INTERNATIONAL TRAFFIC ENGAGED IN SMUGGLING.—For the purposes of this section, prima facie evidence that a conveyance is being, or has been, or is attempted to be employed in smuggling or to defraud the revenue of the United States shall be—

"(1) in the case of a vessel, the fact that a vessel has become subject to pursuit as provided in section 1581 of this title, or is a hovering vessel, or that a vessel fails, at any place within the customs waters of the United States or within a customs-enforcement area, to display light as required by law; and

"(2) in the case of a vehicle, other conveyance, or instrument of international traffic, the fact that a vehicle, other conveyance, or instrument of international traffic has any compartment or equipment that is built or fitted out for smuggling.".

(b) CLERICAL AMENDMENT.—The table of sections for Chapter 5 in title 19, United States Code, is amended by striking the items relating to section 1703 and inserting in lieu thereof the following:

"Sec. 1703. Seizure and forfeiture of vessels, vehicles, other conveyances and instruments of international traffic.".

Subtitle C—Other Measures

SEC. 1110. DEATHS AT UNITED STATES-MEXICO BORDER.

(a) COLLECTION OF STATISTICS.—The Commissioner of the Bureau of Customs and Border Protection shall collect statistics relating to deaths occurring at the border between the United States and Mexico, including—

(1) the causes of the deaths; and

(2) the total number of deaths.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Commissioner of the Bureau of Customs and Border Protection shall submit to the Secretary a report that—

(1) analyzes trends with respect to the statistics collected under subsection (a) during the preceding year; and

(2) recommends actions to reduce the deaths described in subsection (a).

SEC. 1111. BORDER SECURITY ON CERTAIN FEDERAL LAND.

(a) DEFINITIONS.—In this section:

(1) PROTECTED LAND.—The term "protected land" means land under the jurisdiction of the Secretary concerned.

(2) SECRETARY CONCERNED.—The term "Secretary concerned" means—

(A) with respect to land under the jurisdiction of the Secretary of Agriculture, the Secretary of Agriculture; and

(B) with respect to land under the jurisdiction of the Secretary of the Interior, the Secretary of the Interior.

(b) SUPPORT FOR BORDER SECURITY NEEDS.—

(1) IN GENERAL.—To gain operational control over the international land borders of the United States and to prevent the entry of terrorists, unlawful aliens, narcotics, and other contraband into the United States, the Secretary, in cooperation with the Secretary concerned, shall provide—

(A) increased United States Customs and Border Protection personnel to secure protected land along the international land borders of the United States;

(B) Federal land resource training for United States Customs and Border Protection agents dedicated to protected land; and

(C) Unmanned Aerial Vehicles, aerial assets, Remote Video Surveillance camera systems, and sensors on protected land that is directly adjacent to the international land border of the United States.

(2) COORDINATION.—In providing training for Customs and Border Protection agents under paragraph (1)(B), the Secretary shall coordinate with the Secretary concerned to ensure that the training is appropriate to the mission of the National Park Service, the United States Fish and Wildlife Service, the Forest Service, or the relevant agency of the Department of the Interior or the Department of Agriculture to minimize the adverse impact on natural and cultural resources from border protection activities.

(c) ANALYSIS OF DAMAGE TO PROTECTED LANDS.—The Secretary and Secretaries concerned shall develop an analysis of damage to protected lands relating to illegal border activity, including the cost of equipment, training, recurring maintenance, construction of facilities, restoration of natural and cultural resources, recapitalization of facilities, and operations.

(d) RECOMMENDATIONS.—The Secretary shall—

(1) develop joint recommendations with the National Park Service, the United States Fish and Wildlife Service, and the Forest Service for an appropriate cost recovery mechanism relating to items identified in subsection (c); and

(2) not later than 1 year from the date of enactment, submit to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)), including the Subcommittee on National Parks of the Senate and the Subcommittee on National Parks, Recreation, and Public Lands of the House of Representatives, the recommendations developed under paragraph (1).

(e) BORDER PROTECTION STRATEGY.—The Secretary, the Secretary of the Interior, and the Secretary of Agriculture shall jointly develop a border protection strategy that supports the border security needs of the United States in the manner that best protects the homeland, including—

(1) units of the National Park System;

(2) National Forest System land;

(3) land under the jurisdiction of the United States Fish and Wildlife Service; and

(4) other relevant land under the jurisdiction of the Department of the Interior or the Department of Agriculture.

SEC. 1112. SECURE COMMUNICATION.

The Secretary shall, as expeditiously as practicable, develop and implement a plan to improve the use of satellite communications and other technologies to ensure clear and secure 2-way communication capabilities—

(1) among all Border Patrol agents conducting operations between ports of entry;

(2) between Border Patrol agents and their respective Border Patrol stations; and

(3) between all appropriate border security agencies of the Department and State, local, and tribal law enforcement agencies.

SEC. 1113. UNMANNED AIRCRAFT SYSTEMS.

(a) UNMANNED AIRCRAFT AND ASSOCIATED INFRASTRUCTURE.—The Secretary shall acquire and maintain unmanned aircraft systems for use on the border, including related equipment such as—

(1) additional sensors;

(2) critical spares;

(3) satellite command and control; and

(4) other necessary equipment for operational support.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary to carry out subsection (a)—

(A) $178,400,000 for fiscal year 2008; and

(B) $276,000,000 for fiscal year 2009.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 1114. SURVEILLANCE TECHNOLOGIES PROGRAMS.

(a) AERIAL SURVEILLANCE PROGRAM.—

(1) IN GENERAL.—In conjunction with the border surveillance plan developed under section 5201 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; 8 U.S.C. 1701 note), the Secretary, not later than 90 days after the date of enactment of this Act, shall develop and implement a program to fully integrate and utilize aerial surveillance technologies, including unmanned aerial vehicles, to enhance the security of the international border between the United States and Canada and the international border between the United States and Mexico. The goal of the program shall be to ensure continuous monitoring of each mile of each such border.

(2) ASSESSMENT AND CONSULTATION REQUIREMENTS.—In developing the program under this subsection, the Secretary shall—

(A) consider current and proposed aerial surveillance technologies;

(B) assess the feasibility and advisability of utilizing such technologies to address border threats, including an assessment of the technologies considered best suited to address respective threats;

(C) consult with the Secretary of Defense regarding any technologies or equipment which the Secretary may deploy along an international border of the United States; and

(D) consult with the Administrator of the Federal Aviation Administration regarding safety, airspace coordination and regulation, and any other issues necessary for implementation of the program.

(3) ADDITIONAL REQUIREMENTS.—The program developed under this subsection shall include the use of a variety of aerial surveillance technologies in a variety of topographies and areas, including populated and unpopulated areas located on or near an international border of the United States, in order to evaluate, for a range of circumstances—

(A) the significance of previous experiences with such technologies in border security or critical infrastructure protection;

(B) the cost and effectiveness of various technologies for border security, including varying levels of technical complexity; and

(C) liability, safety, and privacy concerns relating to the utilization of such technologies for border security.

(4) CONTINUED USE OF AERIAL SURVEILLANCE TECHNOLOGIES.—The Secretary may continue the operation of aerial surveillance technologies while assessing the effectiveness of the utilization of such technologies.

(5) REPORT TO CONGRESS.—Not later than 180 days after implementing the program under this subsection, the Secretary shall submit a report to Congress regarding the program developed under this subsection. The Secretary shall include in the report a description of the program together with such recommendations as the Secretary finds appropriate for enhancing the program.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(b) INTEGRATED AND AUTOMATED SURVEILLANCE PROGRAM.—

(1) REQUIREMENT FOR PROGRAM.—Subject to the availability of appropriations, the Secretary shall establish a program to procure additional unmanned aerial vehicles, cameras, poles, sensors, satellites, radar coverage, and other technologies necessary to achieve operational control of the international borders of the United States and to establish a security perimeter known as a "virtual fence" along such international borders to provide a barrier to illegal immigration. Such program shall be known as the Integrated and Automated Surveillance Program.

(2) PROGRAM COMPONENTS.—The Secretary shall ensure, to the maximum extent feasible, the Integrated and Automated Surveillance Program is carried out in a manner that—

(A) the technologies utilized in the Program are integrated and function cohesively in an automated fashion, including the integration of motion sensor alerts and cameras, whereby a sensor alert automatically activates a corresponding camera to pan and tilt in the direction of the triggered sensor;

(B) cameras utilized in the Program do not have to be manually operated;

(C) such camera views and positions are not fixed;

(D) surveillance video taken by such cameras can be viewed at multiple designated communications centers;

(E) a standard process is used to collect, catalog, and report intrusion and response data collected under the Program;

(F) future remote surveillance technology investments and upgrades for the Program can be integrated with existing systems;

(G) performance measures are developed and applied that can evaluate whether the Program is providing desired results and increasing response effectiveness in monitoring and detecting illegal intrusions along the international borders of the United States;

(H) plans are developed under the Program to streamline site selection, site validation, and environmental assessment processes to minimize delays of installing surveillance technology infrastructure;

(I) standards are developed under the Program to expand the shared use of existing private and governmental structures to install remote surveillance technology infrastructure where possible; and

(J) standards are developed under the Program to identify and deploy the use of nonpermanent or mobile surveillance platforms that will increase the Secretary's mobility and ability to identify illegal border intrusions.

(3) REPORT TO CONGRESS.—Not later than 1 year after the initial implementation of the Integrated and Automated Surveillance Program, the Secretary shall submit to Congress a report regarding the Program. The Secretary shall include in the report a description of the Program together with any recommendation that the Secretary finds appropriate for enhancing the program.

(4) EVALUATION OF CONTRACTORS.—

(A) REQUIREMENT FOR STANDARDS.—The Secretary shall develop appropriate standards to evaluate the performance of any contractor providing goods or services to carry out the Integrated and Automated Surveillance Program.

(B) REVIEW BY THE INSPECTOR GENERAL.—The Inspector General of the Department shall timely review each new contract related to the Program that has a value of more than $5,000,000, to determine whether such contract fully complies with applicable cost requirements, performance objectives, program milestones, and schedules. The Inspector General shall report the findings of such review to the Secretary in a timely manner. Not later than 30 days after the date the Secretary receives a report of findings from the Inspector General, the Secretary shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives, a report of such findings and a description of any the steps that the Secretary has taken or plans to take in response to such findings.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

SEC. 1115. SURVEILLANCE PLAN.

(a) REQUIREMENT FOR PLAN.—The Secretary shall develop a comprehensive plan for the systematic surveillance of the international land and maritime borders of the United States.

(b) CONTENT.—The plan required by subsection (a) shall include the following:

(1) An assessment of existing technologies employed on the international land and maritime borders of the United States.

(2) A description of the compatibility of new surveillance technologies with surveillance technologies in use by the Secretary on the date of the enactment of this Act.

(3) A description of how the Commissioner of the United States Customs and Border Protection of the Department is working, or is expected to work, with the Under Secretary for Science and Technology of the Department to identify and test surveillance technology.

(4) A description of the specific surveillance technology to be deployed.

(5) Identification of any obstacles that may impede such deployment.

(6) A detailed estimate of all costs associated with such deployment and with continued maintenance of such technologies.

(7) A description of how the Secretary is working with the Administrator of the Federal Aviation Administration on safety and airspace control issues associated with the use of unmanned aerial vehicles.

(c) SUBMISSION TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit to Congress the plan required by this section.

SEC. 1116. NATIONAL STRATEGY FOR BORDER SECURITY.

(a) REQUIREMENT FOR STRATEGY.—The Secretary, in consultation with the heads of other appropriate Federal agencies, shall develop a National Strategy for Border Security that describes actions to be carried out to achieve operational control over all ports of entry into the United States and the international land and maritime borders of the United States.

(b) CONTENT.—The National Strategy for Border Security shall include the following:

(1) The implementation schedule for the comprehensive plan for systematic surveillance described in section 1115.

(2) An assessment of the threat posed by terrorists and terrorist groups that may try to infiltrate the United States at locations along the international land and maritime borders of the United States.

(3) A risk assessment for all United States ports of entry and all portions of the international land and maritime borders of the United States that includes a description of activities being undertaken—

(A) to prevent the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States; and

(B) to protect critical infrastructure at or near such ports of entry or borders.

(4) An assessment of the legal requirements that prevent achieving and maintaining operational control over the entire international land and maritime borders of the United States.

(5) An assessment of the most appropriate, practical, and cost-effective means of defending the international land and maritime borders of the United States against threats to security and illegal transit, including intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities.

(6) An assessment of staffing needs for all border security functions, taking into account threat and vulnerability information pertaining to the borders and the impact of new security programs, policies, and technologies.

(7) A description of the border security roles and missions of Federal, State, regional, local, and tribal authorities, and recommendations regarding actions the Secretary can carry out to improve coordination with such authorities to enable border security and enforcement activities to be carried out in a more efficient and effective manner.

(8) An assessment of existing efforts and technologies used for border security and the effect of the use of such efforts and technologies on civil rights, personal property rights, privacy rights, and civil liberties, including an assessment of efforts to take into account asylum seekers, trafficking victims, unaccompanied minor aliens, and other vulnerable populations.

(9) A prioritized list of research and development objectives to enhance the security of the international land and maritime borders of the United States.

(10) A description of ways to ensure that the free flow of travel and commerce is not diminished by efforts, activities, and programs aimed at securing the international land and maritime borders of the United States.

(11) An assessment of additional detention facilities and beds that are needed to detain unlawful aliens apprehended at United States ports of entry or along the international land borders of the United States.

(12) A description of the performance metrics to be used to ensure accountability by the bureaus of the Department in implementing such Strategy.

(13) A schedule for the implementation of the security measures described in such Strategy, including a prioritization of security measures, realistic deadlines for addressing the security and enforcement needs, an estimate of the resources needed to carry out such measures, and a description of how such resources should be allocated.

(c) CONSULTATION.—In developing the National Strategy for Border Security, the Secretary shall consult with representatives of—

(1) State, local, and tribal authorities with responsibility for locations along the international land and maritime borders of the United States; and

(2) appropriate private sector entities, nongovernmental organizations, and affected communities that have expertise in areas related to border security.

(d) COORDINATION.—The National Strategy for Border Security shall be consistent with the National Strategy for Maritime Security developed pursuant to Homeland Security Presidential Directive 13, dated December 21, 2004.

(e) SUBMISSION TO CONGRESS.—

(1) STRATEGY.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress the National Strategy for Border Security.

(2) UPDATES.—The Secretary shall submit to Congress any update of such Strategy that the Secretary determines is necessary, not

later than 30 days after such update is developed.

(f) IMMEDIATE ACTION.—Nothing in this section or section 1107 may be construed to relieve the Secretary of the responsibility to take all actions necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States.

SEC. 1117. BORDER PATROL TRAINING CAPACITY REVIEW.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a review of the basic training provided to Border Patrol agents by the Secretary to ensure that such training is provided as efficiently and cost-effectively as possible.

(b) COMPONENTS OF REVIEW.—The review under subsection (a) shall include the following components:

(1) An evaluation of the length and content of the basic training curriculum provided to new Border Patrol agents by the Federal Law Enforcement Training Center, including a description of how such curriculum has changed since September 11, 2001, and an evaluation of language and cultural diversity training programs provided within such curriculum.

(2) A review and a detailed breakdown of the costs incurred by the Bureau of Customs and Border Protection and the Federal Law Enforcement Training Center to train 1 new Border Patrol agent.

(3) A comparison, based on the review and breakdown under paragraph (2), of the costs, effectiveness, scope, and quality, including geographic characteristics, with other similar training programs provided by State and local agencies, nonprofit organizations, universities, and the private sector.

(4) An evaluation of whether utilizing comparable non-Federal training programs, proficiency testing, and long-distance learning programs may affect—

(A) the cost-effectiveness of increasing the number of Border Patrol agents trained per year;

(B) the per agent costs of basic training; and

(C) the scope and quality of basic training needed to fulfill the mission and duties of a Border Patrol agent.

SEC. 1118. BIOMETRIC DATA ENHANCEMENTS.

Not later than October 1, 2008, the Secretary shall—

(1) in consultation with the Attorney General, enhance connectivity between the Automated Biometric Fingerprint Identification System (IDENT) of the Department and the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation to ensure more expeditious data searches; and

(2) in consultation with the Secretary of State, collect all fingerprints from each alien required to provide fingerprints during the alien's initial enrollment in the integrated entry and exit data system described in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a).

SEC. 1119. US-VISIT SYSTEM.

Not later than 6 months after the date of the enactment of this Act, the Secretary, in consultation with the heads of other appropriate Federal agencies, shall submit to Congress a schedule for—

(1) equipping all land border ports of entry of the United States with the U.S.–Visitor and Immigrant Status Indicator Technology (US–VISIT) system implemented under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a);

(2) developing and deploying at such ports of entry the exit component of the US-VISIT system; and

(3) making interoperable all immigration screening systems operated by the Secretary.

SEC. 1120. DOCUMENT FRAUD DETECTION.

(a) TRAINING.—Subject to the availability of appropriations, the Secretary shall provide all United States Customs and Border Protection officers with training in identifying and detecting fraudulent travel documents. Such training shall be developed in consultation with the head of the Forensic Document Laboratory of the United States Immigration and Customs Enforcement.

(b) FORENSIC DOCUMENT LABORATORY.—The Secretary shall provide all United States Customs and Border Protection officers with access to the Forensic Document Laboratory.

(c) ASSESSMENT.—

(1) REQUIREMENT FOR ASSESSMENT.—The Inspector General of the Department shall conduct an independent assessment of the accuracy and reliability of the Forensic Document Laboratory.

(2) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, the Inspector General shall submit to Congress the findings of the assessment required by paragraph (1).

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of fiscal years 2008 through 2012 to carry out this section.

SEC. 1121. BORDER RELIEF GRANT PROGRAM.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Secretary is authorized to award grants, subject to the availability of appropriations, to an eligible law enforcement agency to provide assistance to such agency to address—

(A) criminal activity that occurs in the jurisdiction of such agency by virtue of such agency's proximity to the United States border; and

(B) the impact of any lack of security along the United States border.

(2) DURATION.—Grants may be awarded under this subsection during fiscal years 2008 through 2012.

(3) COMPETITIVE BASIS.—The Secretary shall award grants under this subsection on a competitive basis, except that the Secretary shall give priority to applications from any eligible law enforcement agency serving a community—

(A) with a population of less than 50,000; and

(B) located no more than 100 miles from a United States border with—

(i) Canada; or

(ii) Mexico.

(b) USE OF FUNDS.—Grants awarded pursuant to subsection (a) may only be used to provide additional resources for an eligible law enforcement agency to address criminal activity occurring along any such border, including—

(1) to obtain equipment;

(2) to hire additional personnel;

(3) to upgrade and maintain law enforcement technology;

(4) to cover operational costs, including overtime and transportation costs; and

(5) such other resources as are available to assist that agency.

(c) APPLICATION.—

(1) IN GENERAL.—Each eligible law enforcement agency seeking a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities for which assistance under this section is sought; and

(B) provide such additional assurances as the Secretary determines to be essential to ensure compliance with the requirements of this section.

(d) DEFINITIONS.—For the purposes of this section:

(1) ELIGIBLE LAW ENFORCEMENT AGENCY.—The term "eligible law enforcement agency" means a tribal, State, or local law enforcement agency—

(A) located in a county no more than 100 miles from a United States border with—

(i) Canada; or

(ii) Mexico; or

(B) located in a county more than 100 miles from any such border, but where such county has been certified by the Secretary as a High Impact Area.

(2) HIGH IMPACT AREA.—The term "High Impact Area" means any county designated by the Secretary as such, taking into consideration—

(A) whether local law enforcement agencies in that county have the resources to protect the lives, property, safety, or welfare of the residents of that county;

(B) the relationship between any lack of security along the United States border and the rise, if any, of criminal activity in that county; and

(C) any other unique challenges that local law enforcement face due to a lack of security along the United States border.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated $100,000,000 for each of fiscal years 2008 through 2012 to carry out the provisions of this section.

(2) DIVISION OF AUTHORIZED FUNDS.—Of the amounts authorized under paragraph (1)—

(A) ⅔ shall be set aside for eligible law enforcement agencies located in the 6 States with the largest number of undocumented alien apprehensions; and

(B) ⅓ shall be set aside for areas designated as a High Impact Area under subsection (d).

(f) SUPPLEMENT NOT SUPPLANT.—Amounts appropriated for grants under this section shall be used to supplement and not supplant other State and local public funds obligated for the purposes provided under this title.

SEC. 1122. PORT OF ENTRY INFRASTRUCTURE ASSESSMENT STUDY.

(a) REQUIREMENT TO UPDATE.—Not later than January 31 of each year, the Administrator of General Services, in consultation with United States Customs and Border Protection, shall update the Port of Entry Infrastructure Assessment Study prepared by United States Customs and Border Protection in accordance with the matter relating to the ports of entry infrastructure assessment that is set out in the joint explanatory statement in the conference report accompanying H.R. 2490 of the 106th Congress, 1st session (House of Representatives Rep. No. 106–319, on page 67) and submit such updated study to Congress.

(b) CONSULTATION.—In preparing the updated studies required in subsection (a), the Administrator of General Services shall consult with the Director of the Office of Management and Budget, the Secretary, and the Commissioner.

(c) CONTENT.—Each updated study required in subsection (a) shall—

(1) identify port of entry infrastructure and technology improvement projects that would enhance border security and facilitate the flow of legitimate commerce if implemented;

(2) include the projects identified in the National Land Border Security Plan required by section 3422; and

(3) prioritize the projects described in paragraphs (1) and (2) based on the ability of a project to—

(A) fulfill immediate security requirements; and

(B) facilitate trade across the borders of the United States.

(d) PROJECT IMPLEMENTATION.—The Commissioner shall implement the infrastructure and technology improvement projects described in subsection (c) in the order of priority assigned to each project under subsection (c)(3).

(e) DIVERGENCE FROM PRIORITIES.—The Commissioner may diverge from the priority order if the Commissioner determines that significantly changed circumstances, such as immediate security needs or changes in infrastructure in Mexico or Canada, compellingly alter the need for a project in the United States.

SEC. 1123. NATIONAL LAND BORDER SECURITY PLAN.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary, after consultation with representatives of Federal, State, and local law enforcement agencies and private entities that are involved in international trade across the northern border or the southern border, shall submit a National Land Border Security Plan to Congress.

(b) VULNERABILITY ASSESSMENT.—

(1) IN GENERAL.—The plan required in subsection (a) shall include a vulnerability assessment of each port of entry located on the northern border or the southern border.

(2) PORT SECURITY COORDINATORS.—The Secretary may establish 1 or more port security coordinators at each port of entry located on the northern border or the southern border—

(A) to assist in conducting a vulnerability assessment at such port; and

(B) to provide other assistance with the preparation of the plan required in subsection (a).

SEC. 1124. PORT OF ENTRY TECHNOLOGY DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall carry out a technology demonstration program to—

(1) test and evaluate new port of entry technologies;

(2) refine port of entry technologies and operational concepts; and

(3) train personnel under realistic conditions.

(b) TECHNOLOGY AND FACILITIES.—

(1) TECHNOLOGY TESTING.—Under the technology demonstration program, the Secretary shall test technologies that enhance port of entry operations, including operations related to—

(A) inspections;

(B) communications;

(C) port tracking;

(D) identification of persons and cargo;

(E) sensory devices;

(F) personal detection;

(G) decision support; and

(H) the detection and identification of weapons of mass destruction.

(2) DEVELOPMENT OF FACILITIES.—At a demonstration site selected pursuant to subsection (c)(2), the Secretary shall develop facilities to provide appropriate training to law enforcement personnel who have responsibility for border security, including—

(A) cross-training among agencies;

(B) advanced law enforcement training; and

(C) equipment orientation.

(c) DEMONSTRATION SITES.—

(1) NUMBER.—The Secretary shall carry out the demonstration program at not less than 3 sites and not more than 5 sites.

(2) SELECTION CRITERIA.—To ensure that at least 1 of the facilities selected as a port of entry demonstration site for the demonstration program has the most up-to-date design, contains sufficient space to conduct the demonstration program, has a traffic volume low enough to easily incorporate new technologies without interrupting normal processing activity, and can efficiently carry out demonstration and port of entry operations, at least 1 port of entry selected as a demonstration site shall—

(A) have been established not more than 15 years before the date of the enactment of this Act;

(B) consist of not less than 65 acres, with the possibility of expansion to not less than 25 adjacent acres; and

(C) have serviced an average of not more than 50,000 vehicles per month during the 1-year period ending on the date of the enactment of this Act.

(d) RELATIONSHIP WITH OTHER AGENCIES.—The Secretary shall permit personnel from an appropriate Federal or State agency to utilize a demonstration site described in subsection (c) to test technologies that enhance port of entry operations, including technologies described in subparagraphs (A) through (H) of subsection (b)(1).

(e) REPORT.—

(1) REQUIREMENT.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the activities carried out at each demonstration site under the technology demonstration program established under this section.

(2) CONTENT.—The report submitted under paragraph (1) shall include an assessment by the Secretary of the feasibility of incorporating any demonstrated technology for use throughout the United States Customs and Border Protection.

SEC. 1125. COMBATING HUMAN SMUGGLING.

(a) REQUIREMENT FOR PLAN.—The Secretary shall develop and implement a plan to improve coordination between the United States Immigration and Customs Enforcement and the United States Customs and Border Protection of the Department and any other Federal, State, local, or tribal authorities, as determined appropriate by the Secretary, to improve coordination efforts to combat human smuggling.

(b) CONTENT.—In developing the plan required by subsection (a), the Secretary shall consider—

(1) the interoperability of databases utilized to prevent human smuggling;

(2) adequate and effective personnel training;

(3) methods and programs to effectively target networks that engage in such smuggling;

(4) effective utilization of—

(A) visas for victims of trafficking and other crimes; and

(B) investigatory techniques, equipment, and procedures that prevent, detect, and prosecute international money laundering and other operations that are utilized in smuggling;

(5) joint measures, with the Secretary of State, to enhance intelligence sharing and cooperation with foreign governments whose citizens are preyed on by human smugglers; and

(6) other measures that the Secretary considers appropriate to combating human smuggling.

(c) REPORT.—Not later than 1 year after implementing the plan described in subsection (a), the Secretary shall submit to Congress a report on such plan, including any recommendations for legislative action to improve efforts to combating human smuggling.

(d) SAVINGS PROVISION.—Nothing in this section may be construed to provide additional authority to any State or local entity to enforce Federal immigration laws.

SEC. 1126. INCREASE OF FEDERAL DETENTION SPACE AND THE UTILIZATION OF FACILITIES IDENTIFIED FOR CLOSURES AS A RESULT OF THE DEFENSE BASE CLOSURE REALIGNMENT ACT OF 1990.

(a) CONSTRUCTION OR ACQUISITION OF DETENTION FACILITIES.—The Secretary shall construct or acquire, in addition to existing facilities for the detention of aliens, at least 20 detention facilities in the United States that have the capacity to detain a combined total of not less than 20,000 individuals at any time for aliens detained pending removal or a decision on removal of such aliens from the United States subject to available appropriations.

(b) CONSTRUCTION OF OR ACQUISITION OF DETENTION FACILITIES.—

(1) REQUIREMENT TO CONSTRUCT OR ACQUIRE.—The Secretary shall construct or acquire additional detention facilities in the United States to accommodate the detention beds required by section 5204(a) of the Intelligence Reform and Terrorism Protection Act of 2004, as amended by subsection (a), subject to available appropriations.

(2) USE OF ALTERNATE DETENTION FACILITIES.—Subject to the availability of appropriations, the Secretary shall fully utilize all possible options to cost effectively increase available detention capacities, and shall utilize detention facilities that are owned and operated by the Federal Government if the use of such facilities is cost effective.

(3) USE OF INSTALLATIONS UNDER BASE CLOSURE LAWS.—In acquiring additional detention facilities under this subsection, the Secretary shall consider the transfer of appropriate portions of military installations approved for closure or realignment under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) for use in accordance with subsection (a).

(4) DETERMINATION OF LOCATION.—The location of any detention facility constructed or acquired in accordance with this subsection shall be determined, with the concurrence of the Secretary, by the senior officer responsible for Detention and Removal Operations in the Department. The detention facilities shall be located so as to enable the officers and employees of the Department to increase to the maximum extent practicable the annual rate and level of removals of illegal aliens from the United States.

(c) ANNUAL REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, in consultation with the heads of other appropriate Federal agencies, the Secretary shall submit to Congress an assessment of the additional detention facilities and bed space needed to detain unlawful aliens apprehended at the United States ports of entry or along the international land borders of the United States.

(d) TECHNICAL AND CONFORMING AMENDMENT.—Section 241(g)(1) (8 U.S.C. 1231(g)(1)) is amended by striking "may expend" and inserting "shall expend".

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 1127. UNITED STATES-MEXICO BORDER ENFORCEMENT REVIEW COMMISSION.

(a) ESTABLISHMENT OF COMMISSION.—

(1) IN GENERAL.—There is established an independent commission to be known as the United States-Mexico Border Enforcement Review Commission (referred to in this section as the "Commission").

(2) PURPOSES.—The purposes of the Commission are—

(A) to study the overall enforcement strategies, programs, and policies of Federal agencies along the United States-Mexico border; and

(B) to make recommendations to the President and Congress with respect to such strategies, programs, and policies.

(3) MEMBERSHIP.—The Commission shall be composed of 17 voting members, who shall be appointed as follows:

(A) The Governors of the States of California, New Mexico, Arizona, and Texas shall each appoint 4 voting members of whom—

(i) 1 shall be a local elected official from the State's border region;

(ii) 1 shall be a local law enforcement official from the State's border region; and

(iii) 2 shall be from the State's communities of academia, religious leaders, civic leaders, or community leaders.

(B) 2 nonvoting members, of whom—

(i) 1 shall be appointed by the Secretary;

(ii) 1 shall be appointed by the Attorney General; and

(iii) 1 shall be appointed by the Secretary of State.

(4) QUALIFICATIONS.—

(A) IN GENERAL.—Members of the Commission shall be—

(i) individuals with expertise in migration, border enforcement and protection, civil and human rights, community relations, cross-border trade, and commerce or other pertinent qualifications or experience; and

(ii) representative of a broad cross section of perspectives from the region along the international border between the United States and Mexico;

(B) POLITICAL AFFILIATION.—Not more than 2 members of the Commission appointed by each Governor under paragraph (3)(A) may be members of the same political party.

(C) NONGOVERNMENTAL APPOINTEES.—An individual appointed as a voting member to the Commission may not be an officer or employee of the Federal Government.

(5) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed not later than 6 months after the enactment of this Act. If any member of the Commission described in paragraph (3)(A) is not appointed by such date, the Commission shall carry out its duties under this section without the participation of such member.

(6) TERM OF SERVICE.—The term of office for members shall be for life of the Commission.

(7) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(8) MEETINGS.—

(A) INITIAL MEETING.—The Commission shall meet and begin the operations of the Commission as soon as practicable.

(B) SUBSEQUENT MEETINGS.—After its initial meeting, the Commission shall meet upon the call of the chairman or a majority of its members.

(9) QUORUM.—Nine members of the Commission shall constitute a quorum.

(10) CHAIR AND VICE CHAIR.—The voting members of the Commission shall elect a Chairman and Vice Chairman from among its members. The term of office shall be for the life of the Commission.

(b) DUTIES.—The Commission shall review, examine, and make recommendations regarding border enforcement policies, strategies, and programs, including recommendations regarding—

(1) the protection of human and civil rights of community residents and migrants along the international border between the United States and Mexico;

(2) the adequacy and effectiveness of human and civil rights training of enforcement personnel on such border;

(3) the adequacy of the complaint process within the agencies and programs of the Department that are employed when an individual files a grievance;

(4) the effect of the operations, technology, and enforcement infrastructure along such border on the—

(A) environment;

(B) cross-border traffic and commerce; and

(C) the quality of life of border communities;

(5) local law enforcement involvement in the enforcement of Federal immigration law; and

(6) any other matters regarding border enforcement policies, strategies, and programs the Commission determines appropriate.

(c) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.—

(1) INFORMATION FROM FEDERAL AGENCIES.—The Commission may seek directly from any department or agency of the United States such information, including suggestions, estimates, and statistics, as allowed by law and as the Commission considers necessary to carry out the provisions of this section. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

(2) ASSISTANCE FROM FEDERAL AGENCIES.—The Administrator of General Services shall, on a reimbursable basis, provide the Commission with administrative support and other services for the performance of the Commission's functions. The departments and agencies of the United States may provide the Commission with such services, funds, facilities, staff, and other support services as they determine advisable and as authorized by law.

(d) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission shall serve without pay.

(2) REIMBURSEMENT OF EXPENSES.—All members of the Commission shall be reimbursed for reasonable travel expenses and subsistence, and other reasonable and necessary expenses incurred by them in the performance of their duties.

(e) REPORT.—Not later than 2 years after the date of the first meeting called pursuant to (a)(8)(A), the Commission shall submit a report to the President and Congress that contains—

(1) findings with respect to the duties of the Commission;

(2) recommendations regarding border enforcement policies, strategies, and programs;

(3) suggestions for the implementation of the Commission's recommendations; and

(4) a recommendation as to whether the Commission should continue to exist after the date of termination described in subsection (g), and if so, a description of the purposes and duties recommended to be carried out by the Commission after such date.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

(g) SUNSET.—Unless the Commission is reauthorized by Congress, the Commission shall terminate on the date that is 90 days after the date the Commission submits the report described in subsection (e).

SEC. 1128. OPERATION JUMP START.

(a) ADDITIONAL AMOUNT FOR OPERATION AND MAINTENANCE, DEFENSE-WIDE ACTIVITIES.—The amount authorized to be appropriated for operation and maintenance for Defense-wide activities is hereby increased by $400,000,000, for the Department of Defense.

(b) AVAILABILITY OF AMOUNT.—

(1) IN GENERAL.—Of the amount authorized to be appropriated for operation and maintenance for Defense-wide activities, as increased by subsection (a), $400,000,000 shall be available for Operation Jump Start in order to maintain a significant durational force of the National Guard on the southern land border of the United States to assist the United States Border Patrol in gaining operational control of that border.

(2) SUPPLEMENT NOT SUPPLANT.—The amount available under paragraph (1) for the purpose specified in that paragraph is in addition to any other amounts available in this Act for that purpose.

TITLE XII—ENFORCEMENT ENHANCEMENTS

SEC. 1201. INFORMATION SHARING BETWEEN FEDERAL AND LOCAL LAW ENFORCEMENT OFFICERS.

Subsection (b) of section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373) is amended by adding at the end the following new paragraph:

"(4) Acquiring such information, if the person seeking such information has probable cause to believe that the individual is not lawfully present in the United States.".

SEC. 1202. DETENTION AND REMOVAL OF ALIENS ORDERED REMOVED.

(a) AMENDMENTS.—Section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1231(a)) is amended—

(1) by striking "Attorney General" the first place it appears, except for the first reference in subsection (a)(4)(B)(i), and inserting "Secretary of Homeland Security";

(2) by striking "Attorney General" any other place it appears and inserting "Secretary";

(3) in paragraph (1)—

(A) in subparagraph (B), by amending clause (ii) to read as follows:

"(ii) If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of the removal of the alien, the expiration date of the stay of removal.";

(B) by amending subparagraph (C) to read as follows:

"(C) EXTENSION OF PERIOD.—The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to—

"(i) make all reasonable efforts to comply with the removal order; or

"(ii) fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including failing to make timely application in good faith for travel or other documents necessary to the alien's departure, or conspiring or acting to prevent the alien's removal."; and

(C) by adding at the end the following:

"(D) TOLLING OF PERIOD.—If, at the time described in subparagraph (B), the alien is not in the custody of the Secretary under the authority of this Act, the removal period shall not begin until the alien is taken into such custody. If the Secretary lawfully transfers custody of the alien during the removal period to another Federal agency or to a State or local government agency in connection with the official duties of such agency, the removal period shall be tolled, and shall recommence on the date on which the alien is returned to the custody of the Secretary.";

(4) in paragraph (2), by adding at the end the following: "If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of removal of an alien who is subject to an administrative final order of removal, the Secretary, in the exercise of discretion, may detain the alien during the pendency of such stay of removal.";

(5) in paragraph (3), by amending subparagraph (D) to read as follows:

"(D) to obey reasonable restrictions on the alien's conduct or activities, or to perform

affirmative acts, that the Secretary prescribes for the alien—

"(i) to prevent the alien from absconding;

"(ii) for the protection of the community; or

"(iii) for other purposes related to the enforcement of the immigration laws.";

(6) in paragraph (6), by striking "removal period and, if released," and inserting "removal period, in the discretion of the Secretary, without any limitations other than those specified in this section, until the alien is removed. If an alien is released, the alien";

(7) by redesignating paragraph (7) as paragraph (10); and

(8) by inserting after paragraph (6) the following:

"(7) PAROLE.—If an alien detained pursuant to paragraph (6) is an applicant for admission, the Secretary of Homeland Security, in the Secretary's discretion, may parole the alien under section 212(d)(5) and may provide, notwithstanding section 212(d)(5), that the alien shall not be returned to custody unless either the alien violates the conditions of the alien's parole or the alien's removal becomes reasonably foreseeable, provided that in no circumstance shall such alien be considered admitted.

"(8) ADDITIONAL RULES FOR DETENTION OR RELEASE OF ALIENS.—The following procedures shall apply to an alien detained under this section:

"(A) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE EFFECTED AN ENTRY AND FULLY COOPERATE WITH REMOVAL.—The Secretary of Homeland Security shall establish an administrative review process to determine whether an alien described in subparagraph (B) should be detained or released after the removal period in accordance with this paragraph.

"(B) ALIEN DESCRIBED.—An alien is described in this subparagraph if the alien—

"(i) has effected an entry into the United States;

"(ii) has made all reasonable efforts to comply with the alien's removal order;

"(iii) has cooperated fully with the Secretary's efforts to establish the alien's identity and to carry out the removal order, including making timely application in good faith for travel or other documents necessary for the alien's departure; and

"(iv) has not conspired or acted to prevent removal.

"(C) EVIDENCE.—In making a determination under subparagraph (A), the Secretary—

"(i) shall consider any evidence submitted by the alien; and

"(ii) may consider any other evidence, including—

"(I) any information or assistance provided by the Department of State or other Federal agency; and

"(II) any other information available to the Secretary pertaining to the ability to remove the alien.

"(D) AUTHORITY TO DETAIN FOR 90 DAYS BEYOND REMOVAL PERIOD.—The Secretary, in the exercise of the Secretary's discretion and without any limitations other than those specified in this section, may detain an alien for 90 days beyond the removal period (including any extension of the removal period under paragraph (1)(C)).

"(E) AUTHORITY TO DETAIN FOR ADDITIONAL PERIOD.—The Secretary, in the exercise of the Secretary's discretion and without any limitations other than those specified in this section, may detain an alien beyond the 90-day period authorized under subparagraph (D) until the alien is removed, if the Secretary—

"(i) determines that there is a significant likelihood that the alien will be removed in the reasonably foreseeable future; or

"(ii) certifies in writing—

"(I) in consultation with the Secretary of Health and Human Services, that the alien has a highly contagious disease that poses a threat to public safety;

"(II) after receipt of a written recommendation from the Secretary of State, that the release of the alien would likely have serious adverse foreign policy consequences for the United States;

"(III) based on information available to the Secretary (including classified, sensitive, or national security information, and regardless of the grounds upon which the alien was ordered removed), that there is reason to believe that the release of the alien would threaten the national security of the United States;

"(IV) that—

"(aa) the release of the alien would threaten the safety of the community or any person, and conditions of release cannot reasonably be expected to ensure the safety of the community or any person; and

"(bb) the alien—

"(AA) has been convicted of 1 or more aggravated felonies (as defined in section 101(a)(43)(A)), or of 1 or more attempts or conspiracies to commit any such aggravated felonies for an aggregate term of imprisonment of at least 5 years; or

"(BB) has committed a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, is likely to engage in acts of violence in the future; or

"(V) that—

"(aa) the release of the alien would threaten the safety of the community or any person, notwithstanding conditions of release designed to ensure the safety of the community or any person; and

"(bb) the alien has been convicted of 1 or more aggravated felonies (as defined in section 101(a)(43)) for which the alien was sentenced to an aggregate term of imprisonment of not less than 1 year.

"(F) ATTORNEY GENERAL REVIEW.—If the Secretary authorizes an extension of detention under subparagraph (E), the alien may seek review of that determination before the Attorney General. If the Attorney General concludes that the alien should be released, then the Secretary shall release the alien pursuant to subparagraph (I). The Attorney General, in consultation with the Secretary, shall promulgate regulations governing review under this paragraph.

"(G) ADMINISTRATIVE REVIEW PROCESS.—The Secretary, without any limitations other than those specified in this section, may detain an alien pending a determination under subparagraph (E)(ii), if the Secretary has initiated the administrative review process identified in subparagraph (A) not later than 30 days after the expiration of the removal period (including any extension of the removal period under paragraph (1)(C)).

"(H) RENEWAL AND DELEGATION OF CERTIFICATION.—

"(i) RENEWAL.—The Secretary may renew a certification under subparagraph (E)(ii) every 6 months, without limitation, after providing the alien with an opportunity to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew such certification, the Secretary shall release the alien, pursuant to subparagraph (I). If the Secretary authorizes an extension of detention under paragraph (E), the alien may seek review of that determination before the Attorney General. If the Attorney General concludes that the alien should be released, then the Secretary shall release the alien pursuant to subparagraph (I).

"(ii) DELEGATION.—Notwithstanding any other provision of law, the Secretary may not delegate the authority to make or renew a certification described in subclause (II), (III), or (V) of subparagraph (E)(ii) below the level of the Assistant Secretary for Immigration and Customs Enforcement.

"(iii) HEARING.—The Secretary may request that the Attorney General, or a designee of the Attorney General, provide for a hearing to make the determination described in subparagraph (E)(ii)(IV)(bb)(BB).

"(I) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention, the Secretary may, in the Secretary's discretion, impose conditions on release in accordance with the regulations prescribed pursuant to paragraph (3).

"(J) REDETENTION.—The Secretary, without any limitations other than those specified in this section, may detain any alien subject to a final removal order who has previously been released from custody if—

"(i) the alien fails to comply with the conditions of release;

"(ii) the alien fails to continue to satisfy the conditions described in subparagraph (B); or

"(iii) upon reconsideration, the Secretary determines that the alien can be detained under subparagraph (E).

"(K) APPLICABILITY.—This paragraph and paragraphs (6) and (7) shall apply to any alien returned to custody under subparagraph (I) as if the removal period terminated on the day of the redetention.

"(L) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE EFFECTED AN ENTRY AND FAIL TO COOPERATE WITH REMOVAL.—The Secretary shall detain an alien until the alien makes all reasonable efforts to comply with a removal order and to cooperate fully with the Secretary's efforts, if the alien—

"(i) has effected an entry into the United States; and

"(ii)(I) and the alien faces a significant likelihood that the alien will be removed in the reasonably foreseeable future, or would have been removed if the alien had not—

"(aa) failed or refused to make all reasonable efforts to comply with a removal order;

"(bb) failed or refused to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including the failure to make timely application in good faith for travel or other documents necessary to the alien's departure; or

"(cc) conspired or acted to prevent removal; or

"(II) the Secretary makes a certification as specified in subparagraph (E), or the renewal of a certification specified in subparagraph (H).

"(M) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE NOT EFFECTED AN ENTRY.—Except as otherwise provided in this subparagraph, the Secretary shall follow the guidelines established in section 241.4 of title 8, Code of Federal Regulations, when detaining aliens who have not effected an entry. The Secretary may decide to apply the review process outlined in this paragraph.

"(9) JUDICIAL REVIEW.—Judicial review of any action or decision made pursuant to paragraph (6), (7), or (8) shall be available exclusively in a habeas corpus proceeding brought in a United States district court and only if the alien has exhausted all administrative remedies (statutory and nonstatutory) available to the alien as of right.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a)—

(1) shall take effect on the date of the enactment of this Act; and

(2) shall apply to—

(A) any alien subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of the enactment of this Act, unless —

(i) that order was issued and the alien was subsequently released or paroled before the enactment of this Act and

(ii) the alien has complied with and remains in compliance with the terms and conditions of that release or parole; and

(B) any act or condition occurring or existing before, on, or after the date of the enactment of this Act.

(c) DETENTION OF ALIENS DURING REMOVAL PROCEEDINGS.—

(1) DETENTION OF INADMISSIBLE ARRIVING ALIENS.—Section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) is amended by adding at the end the following:

"(e) LENGTH OF DETENTION.—

"(1) IN GENERAL.—An alien may be detained under this section, without limitation, until the alien is subject to an administratively final order of removal.

"(2) EFFECT ON OTHER DETENTION.—The length of a detention under this section shall not affect the validity of any detention under section 241.

"(f) JUDICIAL REVIEW.—Without regard to the place of confinement, judicial review of any action or decision made pursuant to subsection (e) shall be available exclusively in a habeas corpus proceeding instituted in the United States District Court for the District of Columbia if the alien has exhausted all administrative remedies available to the alien as of right.".

(2) DETENTION OF APPREHENDED ALIENS.—Section 236 of such Act (8 U.S.C. 1226) is amended—

(A) by redesignating subsection (e) as subsection (f);

(B) by inserting after subsection (d) the following:

"(e) LENGTH OF DETENTION.—

"(1) IN GENERAL.—An alien may be detained under this section, without limitation, until the alien is subject to an administratively final order of removal.

"(2) EFFECT ON OTHER DETENTION.—The length of a detention under this section shall not affect the validity of any detention under section 241."; and

(C) in subsection (f), as redesignated by subparagraph (A), by adding at the end the following: "Without regard to the place of confinement, judicial review of any action or decision made pursuant to subsection (f) shall be available exclusively in a habeas corpus proceeding instituted in the United States District Court for the District of Columbia if the alien has exhausted all administrative remedies available to the alien as of right.".

(d) SEVERABILITY.—If any provision of this section, any amendment made by this section, or the application of any such provision or amendment to any person or circumstance is held to be invalid for any reason, the remainder of this section, the amendments made by this section, and the application of the provisions and amendments made by this section to any other person or circumstance shall not be affected by such holding.

SEC. 1203. DETENTION PENDING DEPORTATION OF ALIENS WHO OVERSTAY.

Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

"(e) DETENTION OF ALIENS WHO EXCEED THE ALIEN'S PERIOD OF AUTHORIZED ADMISSION.—

"(1) CUSTODY.—An alien shall be arrested and detained by the Secretary of Homeland Security pending a decision on whether the alien is to be removed from the United States if the alien knowingly, or with reason to know exceeded, for willfully exceeding, by 60 days or more, the period of the alien's authorized admission or parole into the United States.

"(2) REASON TO KNOW.—An alien shall be deemed to have reason to know that they exceeded the period of authorized admission if their passport is stamped with the expected departure date, or if the code section under which the visa they applied for contains a length of time for which the visa can be issued.

"(3) WAIVER.—The Secretary of Homeland Security may waive the application of paragraph (1) if the Secretary determines that the alien exceeded the alien's period of authorized admission or parole as a result of exceptional circumstances beyond the control of the alien or the Secretary determines a waiver is necessary for humanitarian purposes.".

SEC. 1204. ILLEGAL REENTRY.

Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by striking subsections (a) through (c) and inserting the following:

"(a) REENTRY AFTER REMOVAL.—An alien who has been denied admission, excluded, deported, or removed, or who has departed the United States while an order of exclusion, deportation, or removal is outstanding, and subsequently enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, and imprisoned not less than 60 days and not more than 2 years.

"(b) REENTRY OF CRIMINAL OFFENDERS.—Notwithstanding the penalty provided in subsection (a), if an alien described in that subsection—

"(1) was convicted for 3 or more misdemeanors or a felony before such removal or departure, the alien shall be fined under title 18, United States Code, and imprisoned not less than 1 year and not more than 10 years;

"(2) was convicted for a felony before such removal or departure for which the alien was sentenced to a term of imprisonment of not less than 30 months, the alien shall be fined under such title, and imprisoned not less than 2 years and not more than 15 years;

"(3) was convicted for a felony before such removal or departure for which the alien was sentenced to a term of imprisonment of not less than 60 months, the alien shall be fined under such title, and imprisoned not less than 4 years and not more than 20 years;

"(4) was convicted for 3 felonies before such removal or departure, the alien shall be fined under such title, and imprisoned not less than 4 years and not more than 20 years; or

"(5) was convicted, before such removal or departure, for murder, rape, kidnapping, or a felony offense described in chapter 77 (relating to peonage and slavery) or 113B (relating to terrorism) of such title, the alien shall be fined under such title, and imprisoned not less than 5 years and not more than 20 years.

"(c) REENTRY AFTER REPEATED REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed 3 or more times and thereafter enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, and imprisoned not less than 2 years and not more than 10 years.".

SEC. 1205. AGGRAVATED FELONY.

(a) DEFINITION OF AGGRAVATED FELONY.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended—

(1) by striking "The term 'aggravated felony' means—" and inserting "Notwithstanding any other provision of law, the term 'aggravated felony' applies to an offense described in this paragraph, whether in violation of Federal or State law, and to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years, even if the length of the term of imprisonment for the offense is based on recidivism or other enhancements, and regardless of whether the conviction was entered before, on, or after September 30, 1996, and means—";

(2) in subparagraph (A), by striking "murder, rape, or sexual abuse of a minor;" and inserting "murder, rape, or sexual abuse of a minor, whether or not the minority of the victim is established by evidence contained in the record of conviction or by evidence extrinsic to the record of conviction;";

(3) in subparagraph (N), by striking "paragraph (1)(A) or (2) of";

(4) in subparagraph (O), by striking "section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph" and inserting "section 275 or 276 for which the term of imprisonment is at least 1 year";

(5) by striking the undesignated matter following subparagraph (U);

(6) in subparagraph (E)—

(A) in clause (ii), by inserting ", (c)," after "924(b)" and by striking "or" at the end; and

(B) by adding at the end the following new clauses:

"(iv) section 2250 of title 18, United States Code (relating to failure to register as a sex offender); or

"(v) section 521(d) of title 18, United States Code (relating to penalties for offenses committed by criminal street gangs);"; and

(7) by amending subparagraph (F) to read as follows:

"(F) either—

"(i) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense); or

"(ii) a third conviction for driving while intoxicated (including a third conviction for driving while under the influence or impaired by alcohol or drugs), without regard to whether the conviction is classified as a misdemeanor or felony under State law, for which the term of imprisonment is at least 1 year;".

(b) EFFECTIVE DATE.—The amendments made by this section shall—

(1) take effect on the date of the enactment of this Act; and

(2) apply to any act that occurred before, on, or after such date of enactment.

SEC. 1206. INADMISSIBILITY AND DEPORTABILITY OF GANG MEMBERS AND OTHER CRIMINALS.

(a) DEFINITION OF CRIMINAL GANG.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by inserting after paragraph (51) the following:

"(52)(A) The term 'criminal gang' means an ongoing group, club, organization, or association of 5 or more persons—

"(i) that has, as 1 of its primary purposes, the commission of 1 or more of the criminal offenses described in subparagraph (B); and

"(ii) the members of which engage, or have engaged within the past 5 years, in a continuing series of offenses described in subparagraph (B).

"(B) Offenses described in this subparagraph, whether in violation of Federal or State law or in violation of the law of a foreign country, regardless of whether charged, and regardless of whether the conduct occurred before, on, or after the date of the enactment of this paragraph, are—

"(i) a felony drug offense (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(ii) a felony offense involving firearms or explosives, including a violation of section 924(c), 924(h), or 931 of title 18 (relating to purchase, ownership, or possession of body armor by violent felons);

"(iii) an offense under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to the importation of an alien for immoral purpose);

"(iv) a felony crime of violence as defined in section 16 of title 18, United States Code;

"(v) a crime involving obstruction of justice; tampering with or retaliating against a witness, victim, or informant; or burglary;

"(vi) any conduct punishable under sections 1028 and 1029 of title 18, United States Code (relating to fraud and related activity in connection with identification documents or access devices), sections 1581 through 1594 of such title (relating to peonage, slavery and trafficking in persons), section 1952 of such title (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of such title (relating to interstate transportation of stolen motor vehicles or stolen property); and

"(vii) a conspiracy to commit an offense described in clause (i) through (vi).".

(b) INADMISSIBILITY.—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended—

(1) by redesignating subparagraph (F) as subparagraph (J); and

(2) by inserting after subparagraph (E) the following:

"(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows or has reason to believe participated in a criminal gang, knowing or having reason to know that such participation promoted, furthered, aided, or supported the illegal activity of the gang, is inadmissible.".

(c) DEPORTABILITY.—Section 237(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

"(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien, in or admitted to the United States, who at any time has participated in a criminal gang, knowing or having reason to know that such participation promoted, furthered, aided, or supported the illegal activity of the gang is deportable.".

(d) TEMPORARY PROTECTED STATUS.—Section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a) is amended—

(1) by striking ", Attorney General" each place it appears and inserting "Secretary of Homeland Security";

(2) in subsection (c)(2)(B)—

(A) in clause (i), by striking "or" and inserting a semicolon;

(B) in clause (ii), by striking the period at the end and inserting "or"; and

(C) by adding at the end the following:

"(iii) the alien participates in, or at any time after admission has participated in, knowing or having reason to know that such participation promoted, furthered, aided, or supported the illegal activity of the gang, the activities of a criminal gang."; and

(3) in subsection (d)—

(A) in paragraph (2)—

(i) by striking "Subject to paragraph (3), such" and inserting "Such"; and

(ii) by striking "(under paragraph (3))";

(B) by striking paragraph (3); and

(C) by redesignating paragraph (4) as paragraph (3); and

(D) in paragraph (3), as redesignated, by adding at the end the following: "The Secretary of Homeland Security may detain an alien provided temporary protected status under this section whenever appropriate under any other provision.".

(e) PRECLUDING ADMISSIBILITY OF ALIENS CONVICTED OF SERIOUS CRIMINAL OFFENSES AND DOMESTIC VIOLENCE, STALKING, CHILD ABUSE AND VIOLATION OF PROTECTION ORDERS.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended—

(1) in subsection (a)(2), by adding at the end the following:

"(J) CERTAIN FIREARM OFFENSES.—Any alien who at any time has been convicted under any law of, or who admits having committed or admits committing acts which constitute the essential elements of, purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer to sale, exchange, use, own, possess, or carry, any weapon, part, or accessory, which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) in violation of any law is inadmissible.

"(K) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTIVE ORDERS; CRIMES AGAINST CHILDREN.—

"(i) DOMESTIC VIOLENCE, STALKING, AND CHILD ABUSE.—Any alien who has been convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment, provided the alien served at least 1 year's imprisonment for the crime or provided the alien was convicted of or admitted to acts constituting more than 1 such crime, not arising out of a single scheme of criminal misconduct, is inadmissible. In this clause, the term 'crime of domestic violence' means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local or foreign government.

"(ii) VIOLATORS OF PROTECTION ORDERS.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that constitutes criminal contempt of the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued, is inadmissible. In this clause, the term 'protection order' means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as an independent order in another proceeding.

"(iii) APPLICABILITY.—This subparagraph shall not apply to an alien who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship, upon a determination by the Attorney General or the Secretary of Homeland Security that—

"(I) the alien was acting in self-defense;

"(II) the alien was found to have violated a protection order intended to protect the alien; or

"(III) the alien committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury.

"(L) AGGRAVATED FELONS.—Any alien who has been convicted of an aggravated felony at any time is inadmissible.".

(2) in subsection (h)—

(A) by striking "The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2)" and inserting "The Attorney General or the Secretary of Homeland Security may waive the application of subparagraphs (A)(i)(I), (B), (D), (E), and (K) of subsection (a)(2)"; and

(B) by inserting "or Secretary of Homeland Security" after "the Attorney General" each place it appears.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) any act that occurred before, on, or after the date of enactment; and

(2) to all aliens who are required to establish admissibility on or after the date of enactment of this section, and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after such date.

SEC. 1207. IMMIGRATION INJUNCTION REFORM.

(a) APPROPRIATE REMEDIES FOR IMMIGRATION LEGISLATION.—

(1) REQUIREMENTS FOR AN ORDER GRANTING PROSPECTIVE RELIEF AGAINST THE GOVERNMENT.—

(A) IN GENERAL.—If a court determines that prospective relief should be ordered against the Government in any civil action pertaining to the administration or enforcement of the immigration laws of the United States, the court shall—

(i) limit the relief to the minimum necessary to correct the violation of law;

(ii) adopt the least intrusive means to correct the violation of law;

(iii) minimize, to the greatest extent practicable, the adverse impact on national security, border security, immigration administration and enforcement, and public safety, and

(iv) provide for the expiration of the relief on a specific date, which is not later than the earliest date necessary for the Government to remedy the violation.

(B) WRITTEN EXPLANATION.—The requirements described in subparagraph (A) shall be discussed and explained in writing in the order granting prospective relief and must be sufficiently detailed to allow review by another court.

(C) EXPIRATION OF PRELIMINARY INJUNCTIVE RELIEF.—Preliminary injunctive relief shall automatically expire on the date that is 90 days after the date on which such relief is entered, unless the court—

(i) makes the findings required under subparagraph (A) for the entry of permanent prospective relief; and

(ii) makes the order final before expiration of such 90-day period.

(D) REQUIREMENTS FOR ORDER DENYING MOTION.—This paragraph shall apply to any order denying the Government's motion to vacate, modify, dissolve or otherwise terminate an order granting prospective relief in any civil action pertaining to the administration or enforcement of the immigration laws of the United States.

(2) PROCEDURE FOR MOTION AFFECTING ORDER GRANTING PROSPECTIVE RELIEF AGAINST THE GOVERNMENT.—

(A) IN GENERAL.—A court shall promptly rule on the Government's motion to vacate, modify, dissolve or otherwise terminate an order granting prospective relief in any civil action pertaining to the administration or enforcement of the immigration laws of the United States.

(B) AUTOMATIC STAYS.—

(i) IN GENERAL.—The Government's motion to vacate, modify, dissolve, or otherwise terminate an order granting prospective relief made in any civil action pertaining to the administration or enforcement of the immigration laws of the United States shall automatically, and without further order of the court, stay the order granting prospective relief on the date that is 15 days after the date on which such motion is filed unless the court previously has granted or denied the Government's motion.

(ii) DURATION OF AUTOMATIC STAY.—An automatic stay under clause (i) shall continue until the court enters an order granting or denying the Government's motion.

(iii) POSTPONEMENT.—The court, for good cause, may postpone an automatic stay under clause (i) for not longer than 15 days.

(iv) ORDERS BLOCKING AUTOMATIC STAYS.—Any order staying, suspending, delaying, or otherwise barring the effective date of the automatic stay described in clause (i), other than an order to postpone the effective date of the automatic stay for not longer than 15 days under clause (iii), shall be—

(I) treated as an order refusing to vacate, modify, dissolve or otherwise terminate an injunction; and

(II) immediately appealable under section 1292(a)(1) of title 28, United States Code.

(3) SETTLEMENTS.—

(A) CONSENT DECREES.—In any civil action pertaining to the administration or enforcement of the immigration laws of the United States, the court may not enter, approve, or continue a consent decree that does not comply with paragraph (1).

(B) PRIVATE SETTLEMENT AGREEMENTS.—Nothing in this subsection shall preclude parties from entering into a private settlement agreement that does not comply with paragraph (1) if the terms of that agreement are not subject to court enforcement other than reinstatement of the civil proceedings that the agreement settled.

(4) EXPEDITED PROCEEDINGS.—It shall be the duty of every court to advance on the docket and to expedite the disposition of any civil action or motion considered under this subsection.

(5) DEFINITIONS.—In this subsection:

(A) CONSENT DECREE.—The term "consent decree"—

(i) means any relief entered by the court that is based in whole or in part on the consent or acquiescence of the parties; and

(ii) does not include private settlements.

(B) GOOD CAUSE.—The term "good cause" does not include discovery or congestion of the court's calendar.

(C) GOVERNMENT.—The term "Government" means the United States, any Federal department or agency, or any Federal agent or official acting within the scope of official duties.

(D) PERMANENT RELIEF.—The term "permanent relief" means relief issued in connection with a final decision of a court.

(E) PRIVATE SETTLEMENT AGREEMENT.—The term "private settlement agreement" means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil action that the agreement settled.

(F) PROSPECTIVE RELIEF.—The term "prospective relief" means temporary, preliminary, or permanent relief other than compensatory monetary damages.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—This section shall apply with respect to all orders granting prospective relief in any civil action pertaining to the administration or enforcement of the immigration laws of the United States, whether such relief was ordered before, on, or after the date of the enactment of this Act.

(2) PENDING MOTIONS.—Every motion to vacate, modify, dissolve or otherwise terminate an order granting prospective relief in any such action, which motion is pending on the date of the enactment of this Act, shall be treated as if it had been filed on such date of enactment.

(3) AUTOMATIC STAY FOR PENDING MOTIONS.—

(A) IN GENERAL.—An automatic stay with respect to the prospective relief that is the subject of a motion described in paragraph (2) shall take effect without further order of the court on the date which is 10 days after the date of the enactment of this Act if the motion—

(i) was pending for 45 days as of the date of the enactment of this Act; and

(ii) is still pending on the date which is 10 days after such date of enactment.

(B) DURATION OF AUTOMATIC STAY.—An automatic stay that takes effect under subparagraph (A) shall continue until the court enters an order granting or denying the Government's motion under subsection (a)(2). There shall be no further postponement of the automatic stay with respect to any such pending motion under subsection (a)(2)(B). Any order, staying, suspending, delaying or otherwise barring the effective date of this automatic stay with respect to pending motions described in paragraph (2) shall be an order blocking an automatic stay subject to immediate appeal under subsection (a)(2)(B)(iv).

SEC. 1208. DEFINITION OF GOOD MORAL CHARACTER.

(a) IN GENERAL.—Section 101(f) of the Immigration and Nationality Act (8 U.S.C. 1101(f)) is amended—

(1) by inserting after paragraph (1) the following:

"(2) an alien described in section 212(a)(3) or 237(a)(4), as determined by the Secretary of Homeland Security or Attorney General, based upon any relevant information or evidence, including classified, sensitive, or national security information;";

(2) in paragraph (8), by striking "(as defined in subsection (a)(43))" and inserting "regardless of whether the crime was classified as an aggravated felony under subsection (a)(43) at the time of conviction, unless the Secretary of Homeland Security or Attorney General, in his discretion, determine that this paragraph shall not apply to a person who completed the term of imprisonment or sentence (whichever is later) more than 10 years prior to the date of application"; and

(3) in the undesignated matter following paragraph (9), by striking "a finding that for other reasons such person is or was not a person of good moral character." and inserting "a discretionary finding for other reasons that such a person is or was not of good moral character. In determining an applicant's moral character, the Secretary of Homeland Security and the Attorney General may take into consideration the applicant's conduct and acts at any time and are not limited solely to the period during which good moral character is required.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to—

(1) any act that occurred before, on or after such date of enactment; and

(2) any application for naturalization or any other benefit or relief, or any other case or matter under the immigration laws, pending on or filed after such date of enactment.

SEC. 1209. LAW ENFORCEMENT AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS TO DETAIN AND TRANSFER TO FEDERAL CUSTODY.

(a) IN GENERAL.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et. seq.) is amended by adding after section 240C the following new section:

"SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS TO DETAIN AND TRANSFER TO FEDERAL CUSTODY.

"(a) IN GENERAL.—If the head of a law enforcement entity of a State (or, if appropriate, a political subdivision of the State) exercising authority with respect to the apprehension or arrest of an alien submits a request to the Secretary of Homeland Security that the alien be taken into Federal custody, the Secretary of Homeland Security—

"(1) shall—

"(A) deem the request to include the inquiry to verify immigration status described in section 642(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373(c)), and expeditiously inform the requesting entity whether such individual is an alien lawfully admitted to the United States or is otherwise lawfully present in the United States or is removable; and

"(B) if the individual is an alien who is removable or who is not lawfully admitted to the United States or otherwise is not lawfully present in the United States—

"(i) take the illegal alien into the custody of the Federal Government not later than 72 hours after—

"(I) the conclusion of the State charging process or dismissal process; or

"(II) the illegal alien is apprehended, if no State charging or dismissal process is required; or

"(ii) request that the relevant State or local law enforcement agency temporarily detain or transport the alien to a location for transfer to Federal custody; and

"(2) shall designate at least 1 Federal, State, or local prison or jail or a private contracted prison or detention facility within each State as the central facility for that State to transfer custody of aliens to the Department of Homeland Security.

"(b) REIMBURSEMENT.—

"(1) IN GENERAL.—The Secretary of Homeland Security shall reimburse a State, or a political subdivision of a State, for expenses, as verified by the Secretary, incurred by the State or political subdivision in the detention and transportation of an alien as described in subparagraphs (A) and (B) of subsection (c)(1).

"(2) COST COMPUTATION.—Compensation provided for costs incurred under subparagraphs (A) and (B) of subsection (c)(1) shall be—

"(A) the product of—

"(i) the average daily cost of incarceration of a prisoner in the relevant State, as determined by the chief executive officer of a State (or, as appropriate, a political subdivision of the State); multiplied by

"(ii) the number of days that the alien was in the custody of the State or political subdivision; plus

"(B) the cost of transporting the alien from the point of apprehension or arrest to the location of detention, and if the location of detention and of custody transfer are different, to the custody transfer point; plus

"(C) the cost of uncompensated emergency medical care provided to a detained alien during the period between the time of transmittal of the request described in subsection (c) and the time of transfer into Federal custody.

"(c) REQUIREMENT FOR APPROPRIATE SECURITY.—The Secretary of Homeland Security shall ensure that—

"(1) aliens incarcerated in a Federal facility pursuant to this section are held in facilities which provide an appropriate level of security; and

"(2) if practicable, aliens detained solely for civil violations of Federal immigration law are separated within a facility or facilities.

"(d) REQUIREMENT FOR SCHEDULE.—In carrying out this section, the Secretary of Homeland Security shall establish a regular circuit and schedule for the prompt transportation of apprehended aliens from the custody of those States, and political subdivisions of States, which routinely submit requests described in subsection (c), into Federal custody.

"(e) AUTHORITY FOR CONTRACTS.—

"(1) IN GENERAL.—The Secretary of Homeland Security may enter into contracts or cooperative agreements with appropriate State and local law enforcement and detention agencies to implement this section.

"(2) DETERMINATION BY SECRETARY.—Prior to entering into a contract or cooperative agreement with a State or political subdivision of a State under paragraph (1), the Secretary shall determine whether the State, or if appropriate, the political subdivision in which the agencies are located, has in place any formal or informal policy that violates section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373). The Secretary shall not allocate any of the funds made available under this section to any State or political subdivision that has in place a policy that violates such section.".

(b) AUTHORIZATION OF APPROPRIATIONS FOR THE DETENTION BY A STATE, OR A POLITICAL SUBDIVISION OF A STATE, AND TRANSPORTATION TO FEDERAL CUSTODY OF ALIENS BELIEVED TO NOT BE LAWFULLY PRESENT.—There are authorized to be appropriated $850,000,000 for fiscal year 2008 and each subsequent fiscal year to reimburse States, and political divisions of States, for the up to 72 hour detention and transportation to Federal custody aliens believed to not be lawfully present in the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et. seq.).

SEC. 1210. INCARCERATION OF CRIMINAL ALIENS.

(a) INSTITUTIONAL REMOVAL PROGRAM.—

(1) CONTINUATION.—The Secretary of Homeland Security shall continue to operate the Institutional Removal Program (referred to in this section as the "Program") or shall develop and implement another program to—

(A) identify removable criminal aliens in Federal and State correctional facilities;

(B) ensure that such aliens are not released into the community; and

(C) remove such aliens from the United States after the completion of their sentences.

(2) EXPANSION.—The Secretary may extend the scope of the Program to all States.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $300,000,000 for fiscal year 2008 to carry out the Institutional Removal Program.

SEC. 1211. AUTHORIZATION FOR DETENTION AND TRANSPORTATION AFTER COMPLETION OF STATE OR LOCAL PRISON SENTENCE.

(a) AUTHORIZATION FOR DETENTION AND TRANSPORTATION AFTER COMPLETION OF STATE OR LOCAL PRISON SENTENCE.—Law enforcement officers of a State or political subdivision of a State may—

(1) hold an illegal alien for a period not to exceed 14 days after the completion of the alien's State prison sentence to effectuate the transfer of the alien to Federal custody if the alien is removable or not lawfully present in the United States;

(2) issue a detainer that would allow aliens who have served a State prison sentence to be detained by the State prison until authorized employees of the Bureau of Immigration and Customs Enforcement can take the alien into custody; or

(3) transport the alien (including the transportation across State lines to detention centers) to a location where transfer to Federal custody can be effectuated.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000,000 per year to reimburse the expenses incurred by States, or political subdivisions of a state, in the detention or transportation of criminal aliens to Federal custody.

SEC. 1212. STRENGTHENING THE DEFINITION OF CONVICTION.

Section 101(a)(48) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(48)) is amended by adding at the end the following:

"(C) Any reversal, vacatur, expungement, or modification of a conviction, sentence, or conviction record that was granted to ameliorate the consequences of the conviction, sentence, or conviction record, or was granted for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt, shall have no effect on the immigration consequences resulting from the original conviction. The alien shall have the burden of demonstrating that any reversal, vacatur, expungement, or modification was not granted to ameliorate the consequences of the conviction, sentence, or conviction record, for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt.".

SEC. 1213. PERMITTING STATE AND LOCAL GRANTS FOR 287(G) TRAINING EXPENSES AND DETENTION AND TRANSPORTATION EXPENSES.

State and local program grants provided in the amount of $294,500,000 in this Act for "training, exercises, technical assistance, and other programs" may be used for the initial payment of, or reimbursement of, state and local expenses related to the implementation of agreements between the Department of Homeland Security and state and local governments in accordance with section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g)) and for the initial payment of, or reimbursement of, state and local expenses related to the costs incurred to detain and transport criminal aliens after the completion of their state and local criminal sentences for the purpose of facilitating transfer to Federal custody."

SEC. 1214. IMPROVEMENTS TO EMPLOYMENT ELIGIBILITY VERIFICATION.

(a) IN GENERAL.—The Secretary of Homeland Security shall improve the Basic Pilot Program (as described in section 403(a) of division C of title IV of Public Law 104-208) to—

(1) respond to inquiries made by participating employers through the Internet concerning an individual's identity and whether the individual is authorized to be employed in the United States;

(2) electronically confirm the issuance of an employment authorization or identity document to the individual who is seeking employment, and to display the photograph that the issuer placed on such document, so that an employer can compare the photograph displayed on the document presented by the individual to the photograph transmitted by the Department of Homeland Security to verify employment authorization or identity;

(3) maximize its reliability and ease of use by employers consistent with insulating and protecting the privacy and security of the underlying information;

(4) respond accurately to all inquiries made by employers on whether individuals are authorized to be employed;

(5) maintain appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information;

(6) allow for auditing use of the system to detect fraud and identify theft, and to preserve the security of the information in the Program, including—

(A) the development and use of algorithms to detect potential identity theft, such as multiple uses of the same identifying information or documents;

(B) the development and use of algorithms to detect misuse of the system by employers and employees;

(C) the development of capabilities to detect anomalies in the use of the Program that may indicate potential fraud or misuse of the Program; and

(D) auditing documents and information submitted by potential employees to employers, including authority to conduct interviews with employers and employees.

(b) COORDINATION WITH STATE GOVERNMENTS.—If use of an employer verification system is mandated by State or local law, the Secretary of the Department of Homeland Security, in consultation with appropriate State and local officials, shall—

(1) ensure that such state and local programs have sufficient access to the federal government's Employment Eligibility Verification (EEV) system and ensure that the EEV has sufficient capacity to—

(A) register employers of states with employer verification requirements;

(B) respond to inquiries by employers; and

(C) enter into Memoranda of Understanding with states to ensure responses to subparagraphs (A) and (B);

(2) develop policies and procedures to ensure protection of the privacy and security of personally identifiable information and identifiers contained in the Basic Pilot Program, including appropriate privacy and security training for State employees.

(c) RESPONSIBILITIES OF THE SOCIAL SECURITY ADMINISTRATION.—For purposes of preventing identity theft, protecting employees, and reducing burden on employers, the Commissioner of Social Security, in consultation with the Secretary of Homeland Security, shall—

(1) review the Social Security Administration databases and information technology to identify any deficiencies and discrepancies related to name, birth date, citizenship status, or to death records of the social security accounts and social security account holders that are likely to contribute to fraudulent use of documents, or identity theft, or to affect the proper functioning of the Basic Pilot Program;

(2) work to correct any errors identified under subclause (A); and

(3) work to ensure that a system for identifying and promptly correcting such deficiencies and discrepancies is adopted to ensure the accuracy of the Social Security Administration's databases.

(d) RULEMAKING.—The Secretary is authorized, with notice to the public provided in the Federal Register, to issue regulations concerning operational and technical aspects of the Basic Pilot Program and the efficiency, accuracy, and security of that Program.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $60,000,000 for fiscal year 2008 to carry out this section.

SEC. 1215. IMMUNITY FOR REPORTS OF SUSPICIOUS BEHAVIOR AND RESPONSE.

(a) IMMUNITY FOR REPORTS OF SUSPICIOUS BEHAVIOR.—

(1) IN GENERAL.—Any person who, in good faith and based on objectively reasonable suspicion, makes, or causes to be made, a voluntary report of covered activity to an authorized official shall be immune from civil liability under Federal, State, and local law for such report.

(2) FALSE REPORTS.—Paragraph (1) shall not apply to any report that the person knew to be false at the time that person made that report.

(b) IMMUNITY FOR RESPONSE.—

(1) IN GENERAL.—Any authorized official who observes, or receives a report of, covered activity and takes reasonable action to respond to such activity shall be immune from civil liability under Federal, State, and local law for such action.

(2) SAVINGS CLAUSE.—Nothing in this subsection shall affect the ability of any authorized official to assert any defense, privilege, or immunity that would otherwise be available, and this subsection shall not be construed as affecting any such defense, privilege, or immunity.

(c) ATTORNEY FEES AND COSTS.—Any person or authorized official found to be immune from civil liability under this section shall be entitled to recover from the plaintiff all reasonable costs and attorney fees.

(d) DEFINITIONS.—In this section:

(1) AUTHORIZED OFFICIAL.—The term "authorized official" means—

(A) any employee or agent of a mass transportation system;

(B) any officer, employee, or agent of the Department of Homeland Security, the Department of Transportation, or the Department of Justice;

(C) any Federal, State, or local law enforcement officer; or

(D) any transportation security officer.

(2) COVERED ACTIVITY.—The term "covered activity" means any suspicious transaction, activity, or occurrence that involves, or is directed against, a mass transportation system or vehicle or its passengers indicating that an individual may be engaging, or preparing to engage, in—

(A) a violent act or act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be such a violation if committed within the jurisdiction of the United States or any State; or

(B) an act of terrorism (as that term is defined in section 3077 of title 18, United States Code).

(3) MASS TRANSPORTATION.—The term "mass transportation"—

(A) has the meaning given to that term in section 5302(a)(7) of title 49, United States Code; and

(B) includes—

(i) school bus, charter, or intercity bus transportation;

(ii) intercity passenger rail transportation;

(iii) sightseeing transportation;

(iv) a passenger vessel as that term is defined in section 2101(22) of title 46, United States Code;

(v) other regularly scheduled waterborne transportation service of passengers by vessel of at least 20 gross tons; and

(vi) air transportation as that term is defined in section 40102 of title 49, United States Code.

(4) MASS TRANSPORTATION SYSTEM.—The term "mass transportation system" means an entity or entities organized to provide mass transportation using vehicles, including the infrastructure used to provide such transportation.

(5) VEHICLE.—The term "vehicle" has the meaning given to that term in section 1992(16) of title 18, United States Code.

(e) EFFECTIVE DATE.—This section shall take effect on November 20, 2006, and shall apply to all activities and claims occurring on or after such date.

SA 2413. Mr. MARTINEZ submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 35, line 20, strike "which shall" and all that follows through "3714):" on line 26 and insert the following: "which shall be allocated based solely on an assessment of risk (as determined by the Secretary of Homeland Security) as follows:

"(1) $900,000,000 for grants to States, of which $375,000,000 shall be for law enforcement terrorism prevention grants:".

SA 2414. Mr. VOINOVICH (for himself, Mr. AKAKA, Mr. LEVIN, Mr. CARPER, and Mrs. MCCASKILL) submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, after line 24, add the following:

SEC. 536. DEPUTY SECRETARY OF HOMELAND SECRETARY FOR MANAGEMENT.

(a) ESTABLISHMENT AND SUCCESSION.—Section 103 of the Homeland Security Act of 2002 (6 U.S.C. 113) is amended—

(1) in subsection (a)—

(A) in the subsection heading, by striking "DEPUTY SECRETARY" and inserting "DEPUTY SECRETARIES";

(B) by striking paragraph (6);

(C) by redesignating paragraphs (2) through (5) as paragraphs (3) through (6), respectively; and

(D) by striking paragraph (1) and inserting the following:

"(1) A Deputy Secretary of Homeland Security.

"(2) A Deputy Secretary of Homeland Security for Management."; and

(2) by adding at the end the following:

"(g) VACANCIES.—

"(1) VACANCY IN OFFICE OF SECRETARY.—

"(A) DEPUTY SECRETARY.—In case of a vacancy in the office of the Secretary, or of the absence or disability of the Secretary, the Deputy Secretary of Homeland Security may exercise all the duties of that office, and for the purpose of section 3345 of title 5, United States Code, the Deputy Secretary of Homeland Security is the first assistant to the Secretary.

"(B) DEPUTY SECRETARY FOR MANAGEMENT.—When by reason of absence, disability, or vacancy in office, neither the Secretary nor the Deputy Secretary of Homeland Security is available to exercise the duties of the office of the Secretary, the Deputy Secretary of Homeland Security for Management shall act as Secretary.

"(2) VACANCY IN OFFICE OF DEPUTY SECRETARY.—In the case of a vacancy in the office of the Deputy Secretary of Homeland Security, or of the absence or disability of the Deputy Secretary of Homeland Security, the Deputy Secretary of Homeland Security for Management may exercise all the duties of that office.

"(3) FURTHER ORDER OF SUCCESSION.—The Secretary may designate such other officers of the Department in further order of succession to act as Secretary.".

(b) RESPONSIBILITIES.—Section 701 of the Homeland Security Act of 2002 (6 U.S.C. 341) is amended—

(1) in the section heading, by striking "**UNDER SECRETARY**" and inserting "**DEPUTY SECRETARY OF HOMELAND SECURITY**";

(2) in subsection (a)—

(A) by inserting "The Deputy Secretary of Homeland Security for Management shall serve as the Chief Management Officer and principal advisor to the Secretary on matters related to the management of the Department, including management integration and transformation in support of homeland security operations and programs." before "The Secretary";

(B) by striking "Under Secretary for Management" and inserting "Deputy Secretary of Homeland Security for Management";

(C) by striking paragraph (7) and inserting the following:

"(7) Strategic planning and annual performance planning and identification and tracking of performance measures relating to the responsibilities of the Department."; and

(D) by striking paragraph (9), and inserting the following:

"(9) The integration and transformation process, to ensure an efficient and orderly consolidation of functions and personnel to the Department, including the development of a management integration strategy for the Department."; and

(3) in subsection (b)—

(A) in paragraph (1), by striking "Under Secretary for Management" and inserting "Deputy Secretary of Homeland Security for Management"; and

(B) in paragraph (2), by striking "Under Secretary for Management" and inserting "Deputy Secretary of Homeland Security for Management".

(c) APPOINTMENT, EVALUATION, AND REAPPOINTMENT.—Section 701 of the Homeland Security Act of 2002 (6 U.S.C. 341) is amended by adding at the end the following:

"(c) APPOINTMENT, EVALUATION, AND REAPPOINTMENT.—The Deputy Secretary of Homeland Security for Management—

"(1) shall be appointed by the President, by and with the advice and consent of the Senate, from among persons who have—

"(A) extensive executive level leadership and management experience in the public or private sector;

"(B) strong leadership skills;

"(C) a demonstrated ability to manage large and complex organizations; and

"(D) a proven record in achieving positive operational results;

"(2) shall—

"(A) serve for a term of 5 years; and

"(B) be subject to removal by the President if the President—

"(i) finds that the performance of the Deputy Secretary of Homeland Security for Management is unsatisfactory; and

"(ii) communicates the reasons for removing the Deputy Secretary of Homeland Security for Management to Congress before such removal;

"(3) may be reappointed in accordance with paragraph (1), if the Secretary has made a satisfactory determination under paragraph (5) for the 3 most recent performance years;

"(4) shall enter into an annual performance agreement with the Secretary that shall set forth measurable individual and organizational goals; and

BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; as follows:

On page 35, line 20, strike "$3,030,500,000" and insert "$3,080,500,000".

On page 36, line 22, strike "$1,836,000,000" and insert "$1,886,000,000".

On page 37, line 20, strike "$400,000,000" and insert "$450,000,000".

On page 37, line 24, insert ", of which $50,000,000 shall be available for Amtrak security upgrades, including infrastructure protection, securing tunnels and stations, hiring and training Amtrak police officers, deploying additional canine units, operating and capital costs associated with security awareness, preparedness, and response, and other activities that enhance the security of Amtrak infrastructure, employees, and passengers" before the semicolon at the end.

SA 2447. Mr. SCHUMER (for himself, Mr. LAUTENBERG, Mrs. CLINTON, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; as follows:

On page 49, line 22, strike the period at the end and all that follows through "2010:" on page 50, line 2, and insert the following: ", of which $10,000,000 shall be available to support the implementation of the Securing the Cities initiative at the level requested in the President's budget.

"SYSTEMS ACQUISITION

"For expenses for the Domestic Nuclear Detection Office acquisition and deployment of radiological detection systems in accordance with the global nuclear detection architecture, $182,000,000, to remain available until September 30, 2010, of which $30,000,000 shall be available to support the implementation of the Securing the Cities initiative at the level requested in the President's budget:".

SA 2448. Mr. SCHUMER (for himself and Mrs. HUTCHISON) submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; as follows:

On page 69, after line 24, add the following:

SEC. 536. INCREASING THE DOMESTIC SUPPLY OF NURSES AND PHYSICAL THERAPISTS THROUGH THE RECAPTURE OF UNUSED EMPLOYMENT-BASED IMMIGRANT VISAS.

Section 106(d) of the American Competitiveness in the Twenty-first Century Act of 2000 (Public Law 106-313; 8 U.S.C. 1153 note) is amended—

(1) in paragraph (1)—

(A) by inserting "1996, 1997," after "available in fiscal year"; and

(B) by inserting "group I," after "schedule A,";

(2) in paragraph (2)(A), by inserting "1996, 1997, and" after "available in fiscal years"; and

(3) by adding at the end the following:

"(4) PETITIONS.—The Secretary of Homeland Security shall provide a process for reviewing and acting upon petitions with respect to immigrants described in schedule A not later than 30 days after the date on which a completed petition has been filed.".

SA 2449. Mrs. DOLE submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; as follows:

On page 39, line 21, insert ", of which not less than $75,000,000 shall be used for training, exercises, and technical assistance consistent with section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g))" before the semicolon at the end.

SA 2450. Ms. COLLINS (for herself, Mr. LIEBERMAN, Mr. CARPER, and Mr. SANDERS) submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, after line 24, add the following:

SEC. 536. The Administrator of the United States Fire Administration may obligate and expend any unobligated funds made available in fiscal year 2006 to the United States Fire Administration to perform deferred annual maintenance at the National Emergency Training Center in Emmitsburg, Maryland.

SA 2451. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _. GAO STUDY OF COST OF FENCING ON THE SOUTHERN BORDER.

(a) INQUIRY AND REPORT REQUIRED.—The Comptroller of the United States shall conduct a study examining—

(1) the total amount of money that has been expended, as of June 20, 2007, to construct 90 miles of fencing on the southern border of the United States;

(2) the average cost per mile of the 90 miles of fencing on the southern border as of June 20, 2007;

(3) the average cost per mile of the 370 miles of fencing that the Department of Homeland Security is required to have completed on the southern border by December 31, 2008, which shall include $1,187,000,000 appropriated in fiscal year 2007 for "border security fencing, technology, and infrastructure" and the $1,000,000,000 appropriated under this Act under the heading "Border Security Fencing, Infrastructure, and Technology";

(4) the total cost and average cost per mile to construct the 700 linear miles (854 topographical miles) of fencing on the southern border required to be constructed under section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended by section 3 of the Secure Fence Act of 2006 (Public Law 109-367);

(5) the total cost and average cost per mile to construct the fencing described in paragraph (4) if the double layer fencing requirement were eliminated; and

(6) the number of miles of single layer fencing, if fencing were not accompanied by additional technology and infrastructure such as cameras, sensors, and roads, which could be built with the $1,187,000,000 appropriated in fiscal year 2007 for "border security fencing, technology, and infrastructure" and the $1,000,000,000 appropriated under this Act under the heading "Border Security Fencing, Infrastructure, and Technology".

(b) SUBMISSION OF REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit a report on the results of the study conducted pursuant to subsection (a) to—

(1) the Committee on Appropriations of the Senate;

(2) the Committee on the Judiciary of the Senate;

(3) the Committee on Appropriations of the House of Representatives; and

(4) the Committee on the Judiciary of the House of Representatives.

SA 2452. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 10, line 26, strike "$1,000,000,000, to remain available until expended: *Provided*," and insert "$2,480,800,000, to remain available until expended, of which $1,548,800,00 shall be designated as an emergency requirement pursuant to section 204 of S. Con. Res. 21 (110th Congress) and shall be used for the construction of topographic mile 371 through linear mile 700 of the miles of fence required by section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended by section 3 of the Secure Fence Act of 2006; *Provided*,".

SA 2453. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 10, line 26, strike "$1,000,000,000, to remain available until expended: *Provided*," and insert "$2,480,800,000, to remain available until expended: *Provided*, that not less than $1,548,800,000 shall be used for the construction of topographic mile 371 through linear mile 700 of the miles of fence required by section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended by section 3 of the Secure Fence Act of 2006 (Public Law 109-367); *Provided further*,".

At the appropriate place, insert the following:

SEC. ___. OFFSETTING LANGUAGE.

All discretionary amounts made available under this Act, other than the amounts appropriated under the subheadings related to funding of customs and border patrol salaries and expenses, immigration and customs enforcement salaries and expenses, United States Coast Guard salaries and expenses, United States Visitor and Immigrant Status Indicator Technology project, disaster relief,

flood map modernization fund, national flood insurance fund, national flood mitigation fund, national predisaster mitigation fund, emergency food and shelter, and Federal law enforcement training center salaries and expenses, shall be reduced on a pro rata basis by $1,548,800,000.

SA 2454. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 40, line 24, insert "*Provided further*, That grants provided under paragraph (3) may be used for State and local expenses relating to the implementation of agreements between the Department of Homeland Security and State and local governments in accordance with section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g))." before the period at the end.

SA 2455. Mr. SESSIONS (for himself and Mr. INHOFE) submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, after line 24, add the following:

SEC. 536. FEDERAL AFFIRMATION OF IMMIGRATION LAW ENFORCEMENT BY STATES AND POLITICAL SUBDIVISIONS OF STATES.

(a) AUTHORITY.—Law enforcement personnel of a State, or a political subdivision of a State, have the inherent authority of a sovereign entity to investigate, apprehend, arrest, detain, or transfer to Federal custody (including the transportation across State lines to detention centers) an alien who is unlawfully present or removable for the purpose of assisting in the enforcement of the immigration laws of the United States, including laws related to visa overstay, in the normal course of carrying out the law enforcement duties of such personnel. This State authority has never been displaced or preempted by Federal law. This State authority to detain or arrest shall not last longer than 72 hours unless the Secretary of Homeland Security requests that the State, or political subdivision of the State, continue to detain or arrest the alien to facilitate transfer to Federal custody. This State authority shall terminate if the State, or political subdivision of the State, is directed by the Secretary of Homeland Security to release the alien.

(b) CONSTRUCTION.—Nothing in this subsection may be construed to require law enforcement personnel of a State or a political subdivision to assist in the enforcement of the immigration laws of the United States.

SEC. 537. LISTING OF IMMIGRATION VIOLATORS IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.

(a) PROVISION OF INFORMATION TO THE NATIONAL CRIME INFORMATION CENTER.—

(1) IN GENERAL.—Except as provided under paragraph (3)(C), not later than 180 days after the date of the enactment of this Act, the Secretary shall provide to the head of the National Crime Information Center of the Department of Justice, and the head of the National Crime Information Center shall input into the National Crime Information Center Database, the information that the Secretary has or maintains related to any alien—

(A) against whom a final order of removal has been issued;

(B) who enters into a voluntary departure agreement, or is granted voluntary departure by an immigration judge, whose period for departure has expired under subsection (a)(3) of section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c), subsection (b)(2) of such section 240B, or who has violated a condition of a voluntary departure agreement under such section 240B;

(C) whom a Federal immigration officer has confirmed to be unlawfully present in the United States or removable from the United States; or

(D) whose visa has been revoked.

(2) REMOVAL OF INFORMATION.—The head of the National Crime Information Center shall promptly remove any information provided by the Secretary under paragraph (1) related to an alien who is lawfully admitted to enter or lawfully permitted to remain in the United States.

(3) PROCEDURE FOR REMOVAL OF ERRONEOUS INFORMATION.—

(A) IN GENERAL.—The Secretary, in consultation with the head of the National Crime Information Center, shall develop and implement a procedure by which an alien may petition the Secretary or head of the National Crime Information Center, as appropriate, to remove any erroneous information provided by the Secretary under paragraph (1) related to such alien.

(B) EFFECT OF FAILURE TO RECEIVE NOTICE.—Under procedures developed under subparagraph (A), failure by the alien to receive notice of a violation of the immigration laws shall not constitute cause for removing information provided by the Secretary under paragraph (1) related to such alien, unless such information is erroneous.

(C) INTERIM PROVISION OF INFORMATION.—Notwithstanding the 180-day period set forth in paragraph (1), the Secretary may not provide the information required under paragraph (1) until the procedures required under this paragraph have been developed and implemented.

(b) INCLUSION OF INFORMATION IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.—Section 534(a) of title 28, United States Code, is amended—

(1) in paragraph (3), by striking "and" at the end;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

"(4) acquire, collect, classify, and preserve records of violations of the immigration laws of the United States; and".

SA 2456. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 6, line 12, strike "$6,601,058,000;" and insert "$7,001,058,000, of which $400,000,000 shall remain available until expended or until operational control of the border is achieved in accordance with the Secure Fence Act of 2006 (Public Law 109–367) for Operation Jump Start in order to maintain a significant durational force of the National Guard on the southern land border of the United States to assist the United States Border Patrol in gaining operational control of that border;".

On page 69, after line 24, add the following:

SEC. 536. TEMPORARY NATIONAL GUARD SUPPORT FOR SECURING THE SOUTHERN LAND BORDER OF THE UNITED STATES.

(a) AUTHORITY TO PROVIDE ASSISTANCE.—Until operational control of the border is achieved in accordance with the Secure Fence Act of 2006 (Public Law 109–367), the Governor of a State, upon the approval of the Secretary of Defense, shall order any units or personnel of the National Guard of such State—

(1) to perform annual training duty under section 502(a) of title 32, United States Code, to carry out in any State along the southern land border of the United States the activities authorized under subsection (b), for the purpose of securing such border; and

(2) to perform duties under section 502(f) of title 32, United States Code, to provide command, control, and continuity of support for units or personnel performing annual training duty under paragraph (1).

(b) AUTHORIZED ACTIVITIES.—The activities authorized under this subsection are any of the following:

(1) Ground reconnaissance activities.

(2) Airborne reconnaissance activities.

(3) Logistical support.

(4) Provision of translation services and training.

(5) Administrative support services.

(6) Technical training services.

(7) Emergency medical assistance and services.

(8) Communications services.

(9) Rescue of aliens in peril.

(10) Construction of roadways, patrol roads, fences, barriers, and other facilities to secure the southern land border of the United States.

(11) Ground and air transportation.

(12) Identification, interrogation, search, seizure, and detention of any alien entering or attempting to enter the United States in violation of any law or regulation regarding the admission, exclusion, expulsion, or removal of aliens, until the alien can be transferred into the custody of a border patrol agent or a customs and border protection officer.

(c) COOPERATIVE AGREEMENTS.—Units and personnel of the National Guard of a State may perform activities in another State under subsection (a) only pursuant to the terms of an emergency management assistance compact or other cooperative arrangement entered into between Governors of such States for purposes of this section, and only with the approval of the Secretary of Defense.

(d) COORDINATION OF ASSISTANCE.—The Secretary of Homeland Security shall, in consultation with the Secretary of Defense and the Governors of the States concerned, coordinate the performance of activities under this section by units and personnel of the National Guard.

(e) ANNUAL TRAINING.—Annual training duty performed by members of the National Guard under subsection (a) shall be appropriate for the units and individual members concerned, taking into account the types of units and military occupational specialties of individual members performing such duty. Individual periods of training duty shall not be limited to 3 weeks per year.

(f) RULES OF ENGAGEMENT.—The Secretary of Homeland Security shall, in consultation with the Secretary of Defense and the Governors of the States concerned, coordinate the rules of engagement to be followed by units and personnel of the National Guard

tasked with authorized activities described in subsection (b)(12). The rules of engagement for the National Guard shall be equivalent to the rules of engagement for Border Patrol agents.

(g) USE OF FORCE.—Nondeadly force may be used by National Guard members stationed at the southern border in the identification, interrogation, search, seizure, and detention of any alien in accordance with subsection (b)(12).

(h) DEFINITIONS.—In this section:

(1) GOVERNOR OF A STATE.—The term "Governor of a State" means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

(2) NONDEADLY FORCE.—The term "nondeadly force" means physical force or restraint that could not reasonably be expected to result in, or be capable of, causing death or serious bodily injury.

(3) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(4) STATE ALONG THE SOUTHERN BOARDER OF THE UNITED STATES.—The term "State along the southern border of the United States" means each of the following:

(A) The State of Arizona.

(B) The State of California.

(C) The State of New Mexico.

(D) The State of Texas.

(i) DURATION OF AUTHORITY.—This section shall be effective until operational control of the border is achieved in accordance with the Secure Fence Act of 2006 (Public Law 109–367).

SA 2457. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 6, line 12, strike "$6,601,058,000;" and insert "$7,001,058,000, of which $400,000,000 shall remain available until expended or until operational control of the border is achieved in accordance with the Secure Fence Act of 2006 (Public Law 109-367) for Operation Jump Start in order to maintain a significant durational force of the National Guard on the southern land border of the United States to assist the United States Border Patrol in gaining operational control of that border;".

On page 69, after line 24, add the following:

SEC. 536. TEMPORARY NATIONAL GUARD SUPPORT FOR SECURING THE SOUTHERN LAND BORDER OF THE UNITED STATES.

(a) AUTHORITY TO PROVIDE ASSISTANCE.—Until operational control of the border is achieved in accordance with the Secure Fence Act of 2006 (Public Law 109-367), the Governor of a State, upon the approval of the Secretary of Defense, may order any units or personnel of the National Guard of such State—

(1) to perform annual training duty under section 502(a) of title 32, United States Code, to carry out in any State along the southern land border of the United States the activities authorized under subsection (b), for the purpose of securing such border; and

(2) to perform duties under section 502(f) of title 32, United States Code, to provide command, control, and continuity of support for units or personnel performing annual training duty under paragraph (1).

(b) AUTHORIZED ACTIVITIES.—The activities authorized under this subsection are any of the following:

(1) Ground reconnaissance activities.

(2) Airborne reconnaissance activities.

(3) Logistical support.

(4) Provision of translation services and training.

(5) Administrative support services.

(6) Technical training services.

(7) Emergency medical assistance and services.

(8) Communications services.

(9) Rescue of aliens in peril.

(10) Construction of roadways, patrol roads, fences, barriers, and other facilities to secure the southern land border of the United States.

(11) Ground and air transportation.

(12) Identification, interrogation, search, seizure, and detention of any alien entering or attempting to enter the United States in violation of any law or regulation regarding the admission, exclusion, expulsion, or removal of aliens, until the alien can be transferred into the custody of a border patrol agent or a customs and border protection officer.

(c) COOPERATIVE AGREEMENTS.—Units and personnel of the National Guard of a State may perform activities in another State under subsection (a) only pursuant to the terms of an emergency management assistance compact or other cooperative arrangement entered into between Governors of such States for purposes of this section, and only with the approval of the Secretary of Defense.

(d) COORDINATION OF ASSISTANCE.—The Secretary of Homeland Security shall, in consultation with the Secretary of Defense and the Governors of the States concerned, coordinate the performance of activities under this section by units and personnel of the National Guard.

(e) ANNUAL TRAINING.—Annual training duty performed by members of the National Guard under subsection (a) shall be appropriate for the units and individual members concerned, taking into account the types of units and military occupational specialties of individual members performing such duty. Individual periods of training duty shall not be limited to 3 weeks per year.

(f) RULES OF ENGAGEMENT.—The Secretary of Homeland Security shall, in consultation with the Secretary of Defense and the Governors of the States concerned, coordinate the rules of engagement to be followed by units and personnel of the National Guard tasked with authorized activities described in subsection (b)(12). The rules of engagement for the National Guard shall be equivalent to the rules of engagement for Border Patrol agents.

(g) USE OF FORCE.—Nondeadly force may be used by National Guard members stationed at the southern border in the identification, interrogation, search, seizure, and detention of any alien in accordance with subsection (b)(12).

(h) DEFINITIONS.—In this section:

(1) GOVERNOR OF A STATE.—The term "Governor of a State" means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

(2) NONDEADLY FORCE.—The term "nondeadly force" means physical force or restraint that could not reasonably be expected to result in, or be capable of, causing death or serious bodily injury.

(3) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(4) STATE ALONG THE SOUTHERN BOARDER OF THE UNITED STATES.—The term "State along the southern border of the United States" means each of the following:

(A) The State of Arizona.

(B) The State of California.

(C) The State of New Mexico.

(D) The State of Texas.

(i) DURATION OF AUTHORITY.—This section shall be effective until operational control of the border is achieved in accordance with the Secure Fence Act of 2006 (Public Law 109–367).

SA 2458. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. CRIMINAL ALIEN PROGRAM PILOT PROJECT.

(a) IN GENERAL.—The Secretary shall use funds appropriated for the Criminal Alien Program of United States Immigration and Customs Enforcement to implement a pilot project to evaluate technology that can—

(1) effectively analyze information on jail and prison populations; and

(2) automatically identify incarcerated illegal aliens in a timely manner before their release from detention.

(b) MINIMUM REQUIREMENTS.—The pilot project implemented under subsection (a) shall involve not fewer than 2 States and shall provide for the daily collection of data from not fewer than 15 jails or prisons.

(c) REPORT.—Not later than July 1, 2008, the Secretary shall submit a report to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives that describes—

(1) the status of the pilot project implemented under subsection (a);

(2) the impact of the pilot project on illegal alien management; and

(3) the Secretary's plans to integrate the technology evaluated under the pilot project into future enforcement budgets and operating procedures.

SEC. ___. INCARCERATION OF CRIMINAL ALIENS.

(a) INSTITUTIONAL REMOVAL PROGRAM.—

(1) CONTINUATION.—The Secretary shall continue to operate the Institutional Removal Program (referred to in this section as the "Program") or shall develop and implement another program to—

(A) identify removable criminal aliens in Federal and State correctional facilities;

(B) ensure that such aliens are not released into the community; and

(C) remove such aliens from the United States after the completion of their sentences.

(2) EXPANSION.—The Secretary may extend the scope of the Program to all States.

(b) AUTHORIZATION FOR DETENTION AFTER COMPLETION OF STATE OR LOCAL PRISON SENTENCE.—Law enforcement officers of a State or political subdivision of a State may—

(1) hold an illegal alien for a period not to exceed 14 days after the completion of the alien's State prison sentence to effectuate the transfer of the alien to Federal custody if the alien is removable or not lawfully present in the United States; or

(2) issue a detainer that would allow aliens who have served a State prison sentence to be detained by the State prison until authorized employees of United States Immigration and Customs Enforcement can take the alien into custody.

(c) TECHNOLOGY USAGE.—Technology, such as videoconferencing, shall be used to the

maximum extent practicable to make the Program available in remote locations. Mobile access to Federal databases of aliens, such as IDENT, and live scan technology shall be used to the maximum extent practicable to make these resources available to State and local law enforcement agencies in remote locations.

(d) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit a report to Congress on the participation of States in the Program and in any other program authorized under subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $30,000,000 for fiscal year 2008 to carry out the Institutional Removal Program.

SEC. ___. STRENGTHENING DEFINITION OF CONVICTION.

Section 101(a)(48) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(48)) is amended by adding at the end the following:

"(C) Any reversal, vacatur, expungement, or modification of a conviction, sentence, or conviction record that was granted to ameliorate the consequences of the conviction, sentence, or conviction record, or was granted for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt, shall have no effect on the immigration consequences resulting from the original conviction. The alien shall have the burden of demonstrating that any reversal, vacatur, expungement, or modification was not granted to ameliorate the consequences of the conviction, sentence, or conviction record, for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt.".

SA 2459. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. EXPANSION OF ZERO TOLERANCE POLICY TO PROSECUTE ALL ILLEGAL ALIENS WHO ILLEGALLY ENTER THE UNITED STATES ALONG THE SOUTHERN LAND BORDER IN THE TUCSON, ARIZONA OR SAN DIEGO, CALIFORNIA SECTOR.

(a) IN GENERAL.—The Secretary of the Homeland Security shall work with the United States Attorney offices assigned to the judicial district located in the Tucson, Arizona and San Diego, California sectors along the southern land border of the United States to implement a zero tolerance policy of prosecuting all undocumented aliens attempting to enter the United States along the southern land border in violation of section 275 of the Immigration and Nationality Act (8 U.S.C. 1325). This policy was successfully implemented in the Del Rio, Texas sector in a program known as Operation Streamline.

(b) REQUIREMENT.—Until the zero tolerance program described in subsection (a) is fully implemented, the Secretary of Homeland Security shall refer all undocumented aliens who are apprehended while attempting to enter the United States in the Tucson, Arizona or San Diego, California sector along the southern land border in violation of section 275 of such Act to the United States Attorneys offices assigned to the judicial district located in such sectors. Such offices shall provide a formal acceptance or declination for prosecution of such undocumented aliens.

SA 2460. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. GAO STUDY OF EFFECT OF AFFIDAVIT OF SUPPORT ON MEANS-TESTED PUBLIC BENEFITS.

(a) INQUIRY AND REPORT REQUIRED.—The Comptroller General of the United States shall conduct a study examining—

(1) the number of immigrants with a sponsor who submitted an Affidavit of Support (I–864) on the immigrant's behalf to the Department of Homeland Security or the former Immigration and Naturalization Service;

(2) the number of immigrants described in paragraph (1) who received Federal-means-tested public benefits (except those public benefits specified in section 403(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(c))) when the sponsor was obligated to support the immigrant and the total dollar value of such benefits;

(3) the number of immigrants described in paragraph (1) who received State means-tested public benefits (except those public benefits specified in such section 403(c)) when the sponsor was obligated to support the immigrant and the total dollar value of such benefits;

(4) the number of immigrants described in paragraph (1) who received local means-tested public benefits (except those public benefits specified in such section 403(c)) when the sponsor was obligated to support the immigrant and the total dollar value of such benefits;

(5) the efforts taken by Federal, State, and local agencies that provided means-tested public benefits described in paragraph (2), (3), or (4) to immigrants to determine whether such immigrants were covered by a sponsor's obligation as contracted in an Affidavit of Support; and

(6) the efforts taken by the Federal, State, and local agencies described in paragraph (5) to obtain repayment from the sponsors who were obligated to reimburse such agencies for the benefits described in paragraph (2), (3), or (4) received by sponsored immigrants.

(b) SUBMISSION OF REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit a report containing the results of the study conducted pursuant to subsection (a) to—

(1) the Committee on Appropriations of the Senate;

(2) the Committee on the Judiciary of the Senate;

(3) the Committee on Appropriations of the House of Representatives; and

(4) the Committee on the Judiciary of the House of Representatives.

SA 2461. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; as follows:

On page 2, line 11, strike "$100,000,000" and insert "$94,000,000".

On page 18, line 2, strike "$5,039,559,000" and insert "$5,045,559,000".

On page 18, line 10, strike "$964,445,000" and insert "$970,445,000".

On page 18, line 20, strike "$2,329,334,000" and insert "$2,335,344,000".

SA 2462. Mrs. DOLE submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; as follows:

On page 16, line 1, strike "may" and insert "shall".

SA 2463. Mr. KERRY (for himself and Ms. SNOWE) submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ——. TSA ACQUISITION - MANAGEMENT POLICY.

(a) IN GENERAL.—Section 114 of title 49, United States Code, is amended by striking subsection (o) and redesignating subsections (p) through (t) as subsections (o) through (s), respectively.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 180 days after the date of enactment of this Act.

SA 2464. Mr. OBAMA submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 54, line 25, insert after "in advance" the following: ", and the Secretary posts on the Department's website whether the grant or contract recipient has been the subject of any civil, criminal, or administrative proceedings initiated or concluded by the Federal Government or any State government during the most recent five-year period".

SA 2465. Mr. DODD (for himself, Ms. COLLINS, and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, after line 24, insert the following:

SEC. 536. (a) The amount appropriated by title III for necessary expenses for programs authorized by the Federal Fire Prevention and Control Act of 1974 under the heading "FIREFIGHTER ASSISTANCE GRANTS" is hereby

increased by $5,000,000 for necessary expenses to carry out the programs authorized under section 34 of that Act (15 U.S.C. 2229a).

(b) The amount appropriated by title III under the heading "INFRASTRUCTURE PROTECTION AND INFORMATION SECURITY" is hereby reduced by $2,000,000.

(c) The amount appropriated by title I under the heading "ANALYSIS AND OPERATIONS" is hereby reduced by $3,000,000.

SA 2466. Mrs. HUTCHISON (for herself, Mr. BINGAMAN, Mr. DOMENICI, Mrs. FEINSTEIN, Mr. CORNYN, and Mrs. BOXER) submitted an amendment intended to be proposed by her to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. IMPROVEMENT OF BARRIERS AT BORDER.

Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended—

(1) in subsection (a), by striking "Attorney General, in consultation with the Commissioner of Immigration and Naturalization," and inserting "Secretary of Homeland Security"; and

(2) in subsection (b)—

(A) in the subsection heading, by striking "IN THE BORDER AREA" and inserting "ALONG THE BORDER";

(B) by redesignating paragraphs (1), (2), (3), and (4) as paragraphs (2), (3), (4), and (5), respectively;

(C) in paragraph (2), as redesignated—

(i) in the paragraph heading, by striking "SECURITY FEATURES" and inserting "ADDITIONAL FENCING ALONG SOUTHWEST BORDER"; and

(ii) by striking subparagraphs (A) through (C) and inserting the following:

"(A) REINFORCED FENCING.—In carrying out subsection (a), the Secretary of Homeland Security shall construct reinforced fencing along not less than 700 miles of the southwest border where fencing would be most practical and effective and provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border.

"(B) PRIORITY AREAS.—In carrying out this section, the Secretary of Homeland Security shall—

"(i) identify the 370 miles along the southwest border where fencing would be most practical and effective in deterring smugglers and aliens attempting to gain illegal entry into the United States; and

"(ii) not later than December 31, 2008, complete construction of reinforced fencing along the 370 miles identified under clause (i).

"(C) CONSULTATION.—

"(i) IN GENERAL.—In carrying out this section, the Secretary of Homeland Security shall consult with the Secretary of Interior, the Secretary of Agriculture, States, local governments, Indian tribes, and property owners in the United States to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such fencing is to be constructed.

"(ii) SAVINGS PROVISION.—Nothing in this subparagraph may be construed to—

"(I) create any right of action for a State, local government, or other person or entity affected by this subsection; or

"(II) affect the eminent domain laws of the United States or of any State.

"(D) LIMITATION ON REQUIREMENTS.—Notwithstanding subparagraph (A), nothing in this paragraph shall require the Secretary of Homeland Security to install fencing, physical barriers, roads, lighting, cameras, and sensors in a particular location along an international border of the United States, if the Secretary determines that the use or placement of such resources is not the most appropriate means to achieve and maintain operational control over the international border at such location."; and

(D) in paragraph (5), as redesignated, by striking "to carry out this subsection not to exceed $12,000,000" and inserting "such sums as may be necessary to carry out this subsection".

SA 2467. Mr. COBURN (for himself and Mr. OBAMA) submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, after line 24, add the following:

SEC. 536. DATA RELATING TO DECLARATIONS OF A MAJOR DISASTER.

(a) IN GENERAL.—Notwithstanding any other provision of law, except as provided in subsection (b), and not later than 30 days after the date that the President determines whether to declare a major disaster because of an event, the Administrator shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives, and publish on the website of the Federal Emergency Management Agency, a report regarding that decision, which shall include all data used to determine whether—

(1) to declare a major disaster; or

(2) a State will be eligible for assistance under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 et seq.).

(b) EXCEPTION.—The Administrator may redact from a report under subsection (a) any data that the Administrator determines would compromise national security.

(c) DEFINITIONS.—In this section—

(1) the term "Administrator" means the Administrator of the Federal Emergency Management Agency; and

(2) the term "major disaster" has the meaning given that term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

SA 2468. Ms. LANDRIEU proposed an amendment to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; as follows:

At the end, add the following:

SEC. 536. (a) POLICY OF THE UNITED STATES.—It shall be the policy of the United States Government that the foremost objective of the United States in the Global War on Terror and in protecting the United States Homeland is to capture or kill Osama bin Laden, Ayman al-Zawahiri, and other members of al Qaeda and to destroy the al Qaeda network.

(b) FUNDING.—

(1) ADDITIONAL AMOUNT FOR COUNTERTERRORIST OPERATIONS.—There is hereby appropriated for the Central Intelligence Agency, $25,000,000.

(2) EMERGENCY REQUIREMENT.—The amount appropriated by paragraph (1) is hereby designated as an emergency requirement pursuant to section 204 of S.Con.Res.21 (110th Congress).

SA 2469. Mr. COCHRAN (for himself and Mr. LOTT) submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 64, between lines 6 and 7, insert the following:

(d) Notwithstanding section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c), projects relating to Hurricanes Katrina and Rita for which the non-Federal share of assistance under that section is funded by amounts appropriated to the Community Development Fund under chapter 9 of title I of division B of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Public Law 109–148; 119 Stat. 2779) or chapter 9 of title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109–234; 120 Stat. 472) shall not be subject to any precertification requirements.

SA 2470. Mr. STEVENS submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 7, line 7, insert after "operations;" the following: of which $20,000,000 shall be utilized to develop and implement a Model Ports of Entry program at the 20 United States international airports with the greatest average annual number of arriving foreign visitors to provide a more efficient and welcoming international arrival process in order to facilitate and promote business and leisure travel to the United States, while also improving security;"

SA 2471. Mr. STEVENS submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr. BYRD (for himself and Mr. COCHRAN) to the bill H.R. 2638, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

On page 7, line 7, insert after "operations;" the following: "of which such sums shall hire and deploy 200 additional CBP officers at domestic airports receiving significant numbers of international passengers to alleviate wait times at such airports;"

SA 2472. Mrs. CLINTON submitted an amendment intended to be proposed to amendment SA 2383 proposed by Mr.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 110th CONGRESS, FIRST SESSION

Vol. 153 WASHINGTON, THURSDAY, JULY 26, 2007 No. 121

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable ROBERT P. CASEY, Jr., a Senator from the State of Pennsylvania.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Lord God, You alone are the creator and sustainer of the universe, so we pause to thank You for the gift of this day. May we show our gratitude by wisely using the gift of time in doing our best to serve You and to help one another.

Empower our Senators in their labors. Let the light of Your countenance calm every troubled thought and guide their feet in the way of peace. Grant them the ability to grow in wisdom and understanding so that they may know the best road to take in solving the problems of our world. Assure them of Your continued concern and love as You create tunnels of hope through mountains of despair. Be their helper and defender. Use them, Lord, for Your glory. Bring them safely through life's complexities into the refuge of Your amazing grace.

We pray in Your gracious Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable ROBERT P. CASEY, Jr., led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 26, 2007.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT P. CASEY, Jr., a Senator from the State of Pennsylvania, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. CASEY thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, this morning the Senate will be in a period of morning business for an hour. Once that is closed, we will go back to the Homeland Security appropriations bill. There are no votes scheduled, although there are seven amendments pending. Perhaps we can dispose of some of those before lunch. We will certainly have some votes during the day.

Another issue which I have mentioned on many occasions is the 9/11 Commission recommendations conference report. That report was to be filed late last night. It is not available. It should be momentarily. We will make sure Senators have the opportunity to look at that. It is a large document.

Let's talk about this week. I know there is a trip scheduled this weekend. I contacted Senator BOXER last night and indicated to her I wasn't quite certain it would be able to take place. She was understanding and said I would have to do what I have to do, although she was disappointed. Maybe the trip can still go. It is a bipartisan trip to Greenland, led by Senators BOXER and ISAKSON.

We don't have a lot to do this week, but it could take a lot of time. We have 2 days. It is Thursday. We need to finish Homeland Security appropriations. I had a conversation last night with Senator CORNYN. We were waiting to get his language yesterday when we were trying to work something out for funding for the border. He had it written out in longhand. Anyway, we don't have it yet, but I am sure we will get that soon. Maybe we can complete that with a unanimous consent. Senator VOINOVICH indicated he wished to speak on it for a while but not long. So we want to accommodate him.

So we want to finish the bill we are on, either today or tomorrow. The other thing we need to do is complete the conference report. I hope we don't have to file cloture on the Homeland Security appropriations bill, which I have said many times I don't want to do. It is an open process, where people can file amendments, and they have done that. We hope we don't have to file cloture also on the conference report. What I wish to do—and I indicated this on a number of occasions—is to be able to start SCHIP on Monday. It appears that is pretty well set, what would happen when we get to that bill. It is a bipartisan bill that would be brought to the floor. There are a number of Senators who have worked on a substitute—Senator KYL, among others. That substitute would certainly be the main topic of the debate. I am confident there will be some other amendments offered, but that is the main issue as to whether the substitute would pass.

So children's health, we need to do that next week. I hope we can start it on Monday. Then the only other thing we need to do is to complete ethics and lobbying reform. As I have indicated, I wish to start another appropriations bill, but that would not take a vote during this session, though we would move to it before we leave. We would only do WRDA, the conference report

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

$2.2 billion in additional spending over which the President has threatened a veto. The Department is already spending one-third of its budget on border security and immigration enforcement—a clear reflection of its priorities.

Next year, the Senate will review the President's budget request and the Appropriations Committee will recommend funding levels. If next year, we determine that more needs to be spent to continue to improve border security and enforcement, fine. But let's not simply toss an additional $3 billion out the window for fiscal year 2008.

I have the deepest respect for my colleagues, but I respectfully disagree on appropriating an additional $3 billion in emergency spending. They know and I know that the sole reason for appropriating these funds would be to convince the American people that Congress cares about securing the border—even though we know this additional spending exceeds what can possibly be spent in the 2008 fiscal year.

The question I ask is: How dumb do they think the American people are? Don't they realize that the American people will see through this charade and realize we are pulling a fast one on them?

How cynical can we be? The American people want us to work harder and smarter and do more with less and will be very angry that we are simply throwing money at a problem in a manner designed to make them feel good in the short term. This is the type of game playing that has caused our approval ratings to slump to all-time lows.

When something comes along that we decide we must spend more money on—and border security could very well be one of those things—then we need to be prepared to pay for that additional spending by either bringing in more revenues or cutting other spending. I ask my colleagues not to support this fiscally irresponsible act that will surely diminish our credibility with the American people.

I thank the ranking member of the Appropriations Subcommittee on Homeland Security for this opportunity. I hope some of my colleagues have an opportunity to understand why I think what we are doing here today is absolutely fiscally irresponsible. I am extremely pleased that this administration and this Congress is taking border security seriously. This attention is long overdue. I know all of us are trying to convey to the public that we are finally acting to secure the border. There is no one more ardent about that than I am. But let me remind my colleagues that the Department of Homeland Security has presented this Congress with a multiyear strategic plan for improving border security and enforcement, called the Secure Border Initiative. The Appropriations Subcommittee recommendations have fully funded the Department's request for what they believe they can accomplish in fiscal year 2008.

I have been on the Homeland Security and Governmental Affairs Committee since I came to the Senate. I was part of creating the Department of Homeland Security. I have spent many hours with Secretary Chertoff and other Department officials. I really believe the money that has been recommended by the Homeland Security Appropriations Subcommittee is adequate to get the job done during fiscal year 2008, in line with the Department's multiyear strategic plan. And we will reevaluate this situation for fiscal year 2009, and fiscal year 2010, and so on. But I do not think we should go through the charade of making the American people believe we are really sincere about securing the border by spending another $3 billion of emergency spending when the substantial funding that has already been recommended for fiscal year 2008 will get the job done.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, I believe under the agreement the remaining time will be controlled by myself and the Senator from Arkansas; is that correct?

The PRESIDING OFFICER. The minority has 40 seconds remaining in morning business.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2008

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 2638, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2638) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes.

Pending:

Byrd/Cochran amendment No. 2383, in the nature of a substitute.

Landrieu amendment No. 2468 (to amendment No. 2383), to state the policy of the U.S. Government on the foremost objective of the United States in the global war on terror and in protecting the U.S. homeland and to appropriate additional sums for that purpose.

Grassley/Inhofe amendment No. 2444 (to amendment No. 2383), to provide that none of the funds made available under this act may be expended until the Secretary of Homeland Security certifies to Congress that all new hires by the Department of Homeland Security are verified through the basic pilot program authorized under section 401 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 or may be available to enter into a contract with a person, employer, or other entity that does not participate in such basic pilot program.

Cochran (for Alexander/Collins) amendment No. 2405 (to amendment No. 2383), to make $300 million available for grants to States to carry out the REAL ID Act of 2005.

Schumer amendment No. 2416 (to amendment No. 2383), to evaluate identification card technologies to determine the most appropriate technology for ensuring the optimal security, efficiency, privacy, and cost of passport cards.

Schumer amendment No. 2461 (to amendment No. 2383), to increase the amount provided for aviation security direction and enforcement.

Schumer amendment No. 2447 (to amendment No. 2383), to reserve $40 million of the amounts appropriated for the Domestic Nuclear Detection Office to support the implementation of the Securing the Cities Initiative at the level requested in the President's budget.

Schumer/Hutchison amendment No. 2448 (to amendment No. 2383), to increase the domestic supply of nurses and physical therapists.

Dole amendment No. 2462 (to amendment No. 2383), to require that not less than $5,400,000 of the amount appropriated to U.S. Immigration and Customs Enforcement be used to facilitate agreements described in section 287(g) of the Immigration and Nationality Act.

Dole amendment No. 2449 (to amendment No. 2383), to set aside $75 million of the funds appropriated for training, exercise, technical assistance, and other programs under the heading State and local programs for training consistent with section 287(g) of the Immigration and Nationality Act.

Cochran (for Grassley) amendment No. 2476 (to amendment No. 2383), to require the Secretary of Homeland Security to establish reasonable regulations relating to stored quantities of propane.

The PRESIDING OFFICER. Under the previous order, the time until 11:35 a.m. shall be for debate on the Graham-Pryor amendment, with 30 minutes under the control of the Senator from Ohio, Mr. VOINOVICH, and the remainder of the time equally divided and controlled by the Senator from South Carolina, Mr. GRAHAM, and the Senator from Arkansas, Mr. PRYOR.

The Senator from South Carolina is recognized.

AMENDMENT NO. 2480 TO AMENDMENT NO. 2483

Mr. GRAHAM. Mr. President, consistent with the unanimous consent agreement, we will be talking about an amendment that was discussed last night. Senator CORNYN had some language changes to the amendment that have now been adopted. I believe it makes it a much stronger, better amendment.

What we are trying to do here is add $3 billion to go toward securing the border, and I believe that is a homeland security event. So it is certainly an amount of money that is large in nature but goes to something that is large in nature in terms of our national security needs.

In terms of Senator VOINOVICH and his concerns about spending—I admire him greatly. He has been a constant, serious, thoughtful voice about controlling spending. This is an emergency designation, which means it is an off-budget item. I think Senator VOINOVICH has every right in the world to be concerned about how the Congress is spending money in a way for the next

generation to pick up the bill, but I would argue there is a time for emergencies in business life and personal life and legislative life, and this is one of those times.

This is an emergency kind of manufactured by Washington. It is something that should have been done 20 years ago. Now we have taken up immigration in a serious way. We had an extensive debate not long ago, and we were not able to get comprehensive immigration reform, but I think most Americans believe losing operational control of the U.S.-Mexican border is a national security issue of a serious nature, and they applaud our efforts to put money into securing the border between the United States and Mexico. That is exactly what this amendment does.

If there were ever a legitimate emergency in this country, I think this would be one of those times because we have lost control of our border. In the age of terrorism, what does it mean for a nation like the United States, which is being pursued by a vicious enemy that knows no boundaries, to lose control of its border?

It means that you are opening yourself up to attack. Now, most of the people who come across the border come here to work. This amendment does not deal with that. Hopefully, it will slow down how you get into the country. Hopefully, it will control who comes into the country—people coming to work illegally or people coming across the border to do us harm, it would make it more difficult.

But the idea of employment and the magnet of employment is not addressed by this amendment. We need a temporary worker program. We need employer verification systems so people cannot come here and fraudulently get jobs. That is not dealt with in this amendment. But this amendment is a great first step to controlling people coming across our border and overstaying their visas. I think it is a step that will get a large bipartisan vote.

What does it do? The $3 billion in emergency spending will allow us to hire 23,000 Border Patrol agents to go report for duty; more boots on the ground, more people patrolling our border making it harder for somebody to come across illegally. We should have done this a long time ago.

This amendment allows the hiring of a substantially larger number of Border Patrol agents, four unmanned aerial vehicles that will allow us to patrol isolated areas of the border by having new technology in place—the unmanned aerial vehicle has been a very effective tool in controlling illegal border crossings—one hundred and five ground-based radar and camera towers. We need walls along the border in urban areas where you can walk across the street, but technology in the desert and other areas of the border has proven to be a good investment. This amendment seriously increases the amount of technology to detect illegal border crossings; 300 miles of vehicle barriers, where people can drive up and down the border with vehicle lanes, where the Border Patrol can patrol that area in question and make it a more effective policing regime; 700 miles of border fence. We have approved the fencing. This would actually completely fund 700 miles of fencing. The border is, I believe, over 2,000 miles. Why 700 miles? Seven hundred miles would allow us to control crossings where you can literally walk across the street. The technology we are putting into place through this amendment will control other areas. The additional boots on the ground will help in all phases.

On the catch-and-release program, where you catch someone, turn them loose, and they come right back, well, we are trying to deal with that problem by increasing detention beds to 45,000, so when we catch someone, we can detain them and deport them—without them never showing up to their hearing.

The Cornyn addition will allow this $3 billion to be used in interior enforcement in a way to go after people who have absconded, who have been deported, who have been issued orders but have left and they are on the run. We can track them down and bring them to justice.

Overall, this amendment is money well spent. I am sorry it has to be spent in an emergency fashion, but it is an emergency. The reason this is an emergency, we have let it get out of hand. The goal of this amendment is operational control of the U.S.-Mexican border.

Mr. President, I call up amendment No. 2480 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. GRAHAM], for himself, Mr. ENZI, Mr. GREGG, Mr. MCCAIN, Mr. MARTINEZ, Mr. KYL, Mr. SUNUNU, and Mr. CORNYN, proposes an amendment numbered 2480 to amendment No. 2383.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end, add the following:

DIVISION B—BORDER SECURITY

TITLE X—BORDER SECURITY REQUIREMENTS

SEC. 1001. SHORT TITLE.

This division may be cited as the "Border Security First Act of 2007".

SEC. 1002. BORDER SECURITY REQUIREMENTS.

(a) REQUIREMENTS.—Not later than 2 years after the date of the enactment of this Act, the President shall ensure that the following are carried out:

(1) OPERATIONAL CONTROL OF THE INTERNATIONAL BORDER WITH MEXICO.—The Secretary of Homeland Security shall establish and demonstrate operational control of 100 percent of the international land border between the United States and Mexico, including the ability to monitor such border through available methods and technology.

(2) STAFF ENHANCEMENTS FOR BORDER PATROL.—The United States Customs and Border Protection Border Patrol shall hire, train, and report for duty 23,000 full-time agents.

(3) STRONG BORDER BARRIERS.—The United States Customs and Border Protection Border Patrol shall—

(A) install along the international land border between the United States and Mexico at least—

(i) 300 miles of vehicle barriers;

(ii) 700 linear miles of fencing as required by the Secure Fence Act of 2006 (Public Law 109–367), as amended by this Act; and

(iii) 105 ground-based radar and camera towers; and

(B) deploy for use along the international land border between the United States and Mexico 4 unmanned aerial vehicles, and the supporting systems for such vehicles.

(4) CATCH AND RETURN.—The Secretary of Homeland Security shall detain all removable aliens apprehended crossing the international land border between the United States and Mexico in violation of Federal or State law, except as specifically mandated by Federal or State law or humanitarian circumstances, and United States Immigration and Customs Enforcement shall have the resources to maintain this practice, including the resources necessary to detain up to 45,000 aliens per day on an annual basis.

(b) PRESIDENTIAL PROGRESS REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, and every 90 days thereafter until the requirements under subsection (a) are met, the President shall submit a report to Congress detailing the progress made in funding, meeting, or otherwise satisfying each of the requirements described under paragraphs (1) through (4) of subsection (a), including detailing any contractual agreements reached to carry out such measures.

(2) PROGRESS NOT SUFFICIENT.—If the President determines that sufficient progress is not being made, the President shall include in the report required under paragraph (1) specific funding recommendations, authorization needed, or other actions that are or should be undertaken by the Secretary of Homeland Security.

SEC. 1003. APPROPRIATIONS FOR BORDER SECURITY.

There is hereby appropriated $3,000,000,000 to satisfy the requirements set out in section 1002(a) and, if any amount remains after satisfying such requirements, to achieve and maintain operational control over the international land and maritime borders of the United States, for employment eligibility verification improvements for increased removal and detention of visa overstays, criminal aliens, aliens who have illegally reentered the United States and for reimbursment of State and local section 287(g) expenses. These amounts are designated as an emergency requirement pursuant to section 204 of S. Con. Res. 21 (110th Congress).

Mr. GRAHAM. Mr. President, I ask unanimous consent to add Senator HUTCHISON as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM. I yield to Senator CORNYN to speak on this topic for 5 minutes.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I wish to express my gratitude to Senator

GRAHAM for his strong leadership on this issue. I know Senator PRYOR, on the other side of the aisle, is the principal Democratic cosponsor.

I concur with what Senator GRAHAM said. The necessity for this particular amendment is occasioned by the neglect of the Federal Government over the last 20 years at meeting its commitment to do whatever is necessary to keep the American people safe.

This has become, of course, a national focus in a post-9/11 world, when we have to know who is coming across our borders and what their intentions are. We cannot any longer assume people are coming across for benign reasons or are simply economic migrants because we know the same broken borders that allow a person to come across who wants to work in the United States can be exploited by human smugglers or drug traffickers and potentially even those who want to come here and commit acts of terrorism in the United States.

Yesterday, I made a part of the CONGRESSIONAL RECORD, by unanimous consent, the first of a four-part article written in the San Antonio Express News, documenting the movement of what are called special interest aliens; that is, individuals who are coming to America, from countries where terrorism is flourishing, through our broken southern border.

The particular story that is documented talks about a young Iraqi who traveled from Damascus, Syria, to Moscow, to Havana and then to Guatemala and then up through the southern border, our southern border with Mexico, into the United States. Thank goodness this individual did not appear to be committed to a life of terrorism, but it demonstrates the kind of vulnerability we have in this country, and it is important we do everything possible to protect it.

I am pleased with the majority leader's agreement to now allow us to include the use of these funds for interior enforcement because we know 45 percent of the illegal immigration in this country occurs not from people who violate the border but people who enter legally, then overstay and then go underground. So I am grateful to the majority leader and am pleased to support this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. SALAZAR. Mr. President, I come to the floor this morning to speak about amendment No. 2480, the Graham-Pryor amendment. Let me first say the legislation Senator GRAHAM and Senator PRYOR have brought to the floor this morning, in terms of an amendment, is essentially the same language and has the same legislative provisions we had in the comprehensive immigration reform package. They are good aspects of that legislation that allow us to move forward with securing and fixing our borders.

As we went through the immigration reform debate, we said we had to do three things: First, we needed to enforce and fix our borders; secondly, we needed to enforce our laws within our country; and, thirdly, we needed to figure out a realistic solution to the reality that we have 12 million undocumented workers who are here in this country today.

This amendment takes a part of those principal components and addresses it in a very effective way. Indeed, when you look through the language, what it does is it says we will hire 23,000 additional Border Patrol agents; we will have 4 unmanned aerial vehicles and 105 ground-based radar and camera towers; we will have 300 miles of vehicle barriers and 700 miles of fence; we will have a permanent end to the catch-and-release policy and additional funding to enhance employment verification; we will have increased removal and detention of visa overstays and reimbursement to State and local governments for immigration expenses.

So that all is good. It addresses one of the fundamental components of immigration reform. So I am supportive of what we are trying to do here. I do wish to let my good friend and colleague, Senator GRAHAM, and my good friend, Senator PRYOR, know that the concern I have with the amendment, notwithstanding the fact that I will support it, is that it is all focused on the southern border.

While it may be, and it is true our borders are broken, it is not just the border between Mexico and the United States that is broken. We have the same kinds of problems in our ports, we have the same kinds of problems along our northern border. This is, frankly, unfair in terms of focusing only on the Mexican border. We have to fix all our borders, not just the Mexican border.

So while I will be supporting this amendment, I also intend to offer another amendment that will address the other broken borders we have in our country because I think that is a way to be fair about it. It is the only way in which we will ultimately achieve the objective we have, which is dealing with the national security of the United States of America. You cannot have national security when you have broken borders.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I am very pleased that Senator GRAHAM and others have come together to increase and enhance our border security in this country. We all know in this Chamber we have tried very hard to reform our immigration system that we have on the books.

In fact, I have been very vocal saying I am for immigration reform. I think we need to do that. But so far we have not been able to get that done in the Senate. I believe, honestly, we need more involvement with the White House in trying to get that done.

But regardless of that, today one of the things that came through to me loudly and clearly from the people in Arkansas is we need to secure our border. People do not want to wait 2 years, 3 years, 5 years, whatever it may be, to have border security; they want us to start working on that now.

That is what we are trying to accomplish with this amendment today. Again, I am very pleased that Senator GRAHAM, a true South Carolina conservative Member of this body, someone whom we all respect, someone who, even though he has impeccable conservative and Republican credentials, is willing to reach across the aisle to work with others to try to get good things done for his State and for our country. He and Senator CORNYN of Texas and many others have worked on this issue. I am very pleased to be part of a bipartisan solution on border security.

One of the things I like about this legislation is it adds $3 billion for border security. That means we will get 23,000 additional full-time border agents, we will get new border-monitoring technology, we will get 300 miles of vehicle barriers, we will get 700 miles of fence. That is funded by this amendment. We will get 105 radar and camera towers, and we will get resources to detain an additional 45,000 illegal immigrations who are in this country right now.

It also includes money to help with some internal matters in this country, to help do some processing and look at employee issues and employer issues, et cetera.

This is a good amendment. I think one of the things I heard loudly and clearly from the immigration debates we had on the Senate floor was people in Arkansas want us to secure the border first, let's enforce the laws we have on the books. They have been on the books for a long time; and we have not done a very good job of enforcing those laws.

When I say "we," I mean the administration. The will to try to enforce the laws we have on the books has not been there. I am not trying to point fingers. It is not only this administration; we can go back for a couple of decades.

Regardless of that, I am not trying to point fingers. Right now I want to look forward. I want to add to this amendment an additional $3 billion for border enforcement to enhance this Nation's security.

I encourage my colleagues to look at this, give it very strong consideration, and support this amendment. It is bipartisan. We have a number of Senators who were on it originally, a number more have been added as we go today. So I would, in closing, recommend to my colleagues that they give this very strong consideration. It will allow us to enforce the laws we have on the books, it allows us to enhance our border security in very real and very meaningful ways. I think it is what the American public wants.

I yield the floor and suggest the absence of a quorum and ask that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MARTINEZ. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MARTINEZ. Mr. President, I rise to speak on the border security amendment No. 2480. As the immigration bill came to a close, there was one thing that was very clear—there was unanimity and support for the issue of border security. The issue of protecting our border is one we all understand. The American people understand. It needs to be done. That was one of the many things that was in that bill that was undone that needed doing.

I believe today we do a great thing by moving this issue forward. We have a great threat of terrorism, the continued flow of illegal immigrants. We need to do all we can to secure our border.

This amendment will provide an increase in resources to improve our security by building our physical presence and surveillance on the border itself. It requires within 2 years of enactment that we secure operational control over the southern border between the United States and Mexico, and it allows the Border Patrol and U.S. Customs to hire and train and report for duty 23,000 full-time agents. I believe this is a step in the right direction. The United States, in addition to that, will deploy four unmanned aerial vehicles. These are essential for electronic surveillance in order to fully protect our southern border. In addition, the U.S. shall engage in the catch and return of illegal aliens. We know that a great many of those who are here illegally have simply overstayed their visas. This also permits interior enforcement in order to be able to be successful in implementing strong border and interior enforcement. Ninety days from enactment of this bill and every 90 days thereafter, the administration shall report to Congress on the progress. If the progress isn't on track, the report will include specific recommendations for fixing the problem. That is essential because for too long we have known we had a problem. We have thrown money at the problem, and the solutions have not always been what we wanted. Regardless of our position on the issue of immigration, all of us can coalesce around the idea that border security is essential to the rights of a sovereign nation. The deployment of additional border agents, the end of catch and release, the provision of additional space in beds, interior enforcement to ensure we can begin to move forward to ensure those who have overstayed their visas, we understand how that happens and we keep track of that, and not allow them to occur. It is all part of what we need to do in order to ensure we have a safe and secure country.

Giving the American people the security and understanding that the Government is serious about border enforcement and about interior security, we then will be able to move forward with phases of the immigration reform act that did not come to pass. There was a lack of credibility that our Government has with the people with respect to our seriousness of purpose in border enforcement. This amendment is a step forward. We are putting the dollars that it needs, in addition to the specific direction it ought to have, as well to ensure that we will have the kind of border security all Americans expect and want so that we can then move forward with the other phases of immigration reform that are so desperately needed.

I yield the floor.

The PRESIDING OFFICER (Mr. BROWN). The President pro tempore is recognized.

Mr. BYRD. I thank the Chair.

Mr. President, the Senate yesterday attempted to add $3 billion in emergency spending to secure our borders. I supported that effort. Unfortunately, rather than voting on the substance of the amendment, it was necessary for the Senate to vote on a procedural matter. In order to provide for the orderly processing of appropriations bills in the Senate, it was essential to vote to sustain the ruling of the Chair under rule XVI. However, I still believe it is important that we not miss this opportunity to provide robust funding to secure our borders and to enforce our immigration law. Therefore, I support the amendment providing $3 billion—that is $3 for every minute since Jesus Christ was born—get that, hear me, $3 for every minute since Jesus Christ was born—in emergency spending to hire, train, and equip Border Patrol agents and immigration enforcement officials, procure additional detention beds, expand our immigration enforcement efforts on the interior, construct border fencing infrastructure, and technology, and other steps to secure our borders.

This $3 billion will not be encumbered by controversial legislative and policy issues. Instead, it will be used in support of already authorized activities such as hiring Border Patrol agents, building fencing and other border technology, and enforcing the immigration laws already on the books.

Specifically, this amendment will hire, train, and equip at least 5,000 new Border Patrol agents, in addition to the 3,000 new agents funded in the underlying bill. It will procure more than 4,000 additional detention beds, in addition to the 4,000 new beds funded in the underlying bill. It will hire more than 1,000 new immigration investigators and detention and removal personnel to perform interior enforcement activities such as expanding the work site enforcement investigation. It will increase the number of Criminal Alien Program and Fugitive Operations teams to locate and remove the over 630,000 fugitive alien absconders whom a judge has already ordered to be removed. It provides an additional $1 billion for border fencing, infrastructure, and technology.

Finally, it provides funds to procure additional helicopters, fixed-wing aircraft, marine vessels, and other border surveillance equipment, as well as funds to construct additional border stations in which our Border Patrol agents work. This amendment is balanced, and it is focused on meeting the immediate border security needs while enforcing our current immigration law.

I urge my colleagues on my left and my colleagues on my right to support the amendment.

I thank all Senators, and I yield the floor.

Mrs. MURRAY. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRAHAM. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM. Mr. President, I understand Senator SESSIONS wishes to speak. He is on the way. As soon as he gets here, we will gladly yield back any time that is remaining. I wish to make a couple comments about the amendment.

No. 1, in terms of spending, it is one of those situations where the country finds itself in an emergency that maybe shouldn't have been an emergency to begin with because we have neglected our border security obligations.

I ask unanimous consent to add Senators SPECTER, COLEMAN, and LINCOLN as cosponsors of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM. We are where we are as a nation. We have a porous border. Every time a supplemental bill comes through on Iraq, it gets the votes from this body that it needs to become law, because all of us understand, whether we disagree with the policies in Iraq, that once the soldiers and warfighters are there, our troops are there, there are certain things that have to flow from their presence, and we designate a lot of money for the Iraqi operation as emergency spending; I believe rightfully so.

Well, I would argue to anybody, Republican or Democrat, that one of the big chinks in our national security armor is a porous border between the United States and Mexico, and this $3 billion will really help in a serious way. It is serious money to deal with a serious problem that is truly an emergency. It will add more boots on the

ground. It will add agents for there to be a total of 23,000 border security agents on the border, which is a tremendous increase over what we have now. I think it is like 13,000 or 14,000.

But the technology in this bill will be a force multiplier. The technology we spend money to secure will allow the force in place to be multiplied by a factor of many because the technology literally leverages the boots on the ground in a tremendous way.

The 45,000 additional bedspaces will stop a program that is really the wrong message to send—catch and release: We catch you. We release you back. You come again. Now we have bedspace to detain people to make sure they do not flee, and they are deported for coming across the borders illegally.

It is an effort to basically deal with a problem that has been a long time in the making. There is money that will have a beneficial consequence to securing our borders. The term "operational control" is a military term. I look at this effort to secure our borders in many ways as a military operation.

I hope this amendment gets a strong bipartisan vote. I understand Senator VOINOVICH's concern about the emergency designation in spending money offline, but this is one of those times I think it is justified.

To the administration, I understand your concerns about spending, but you have sent hundreds of millions of dollars in requests over—billions of dollars—to the Congress to make sure we have the money necessary to secure Iraq for our troops' point of view. Now it is time to spend $3 billion to secure our borders here at home.

I hope the body will understand this is a step forward. It does not solve the problem. We still have a magnet of employment that has to be dealt with. We need a temporary worker program. We need a lot of things this amendment does not cover. But this is a great start in providing operational security to a porous border that in the age of terrorism is really not only an emergency but a national disgrace.

I hope the taxpayers at large will see this as a serious effort to do something about a problem which has huge consequences over time if left unaddressed. So I appreciate Senator REID working with us and Senator CORNYN making it better and my good friend from Arkansas, Senator PRYOR, for helping us move the ball down the road.

If this bill ever gets to conference, which I hope it will, I hope this provision is left standing as is because if there is a retreat from this, from the money, and from the designations in this amendment, I think it would be considered a retreat in terms of regaining operational control of our borders.

So with that, I believe Senator PRYOR wishes to be recognized.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, I ask unanimous consent to add Senator BYRD as a cosponsor to this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRYOR. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SALAZAR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SALAZAR. Mr. President, I ask unanimous consent that I be added as a cosponsor to the Graham-Pryor amendment, which is currently the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The senior Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time in the quorum call be evenly divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAMBLISS. Mr. President, I rise in support of the Graham amendment to the Homeland Security appropriations bill. This is an issue which has been with us for years now, an issue of border security which we simply, as a group of policymakers, have not addressed in the right way. That became pretty obvious during our debate on the immigration bill several weeks ago. All of us heard from our constituents back home that while overall immigration reform may be needed in due course, what we need to do immediately is to take action to make sure our borders are, in fact, actually secure. That is the first step in real immigration reform.

Senator ISAKSON and I sent a letter to the administration imploring them to take action on this issue. We have asked the administration to send an emergency supplemental to the Senate and the House requesting that certain measures to secure our borders be enacted and adequately funded.

What Senator GRAHAM has done with this amendment is a step in the right direction toward ensuring that our borders—particularly our border to the south—are made secure.

I am a little bit disappointed we cannot go any further because what Senator ISAKSON and I have asked the administration to do in its supplemental request to this body would be to include the creation of a biometric identification card so all of those folks who cross the border in a legal way would have that identification card and any employer who sought to hire any of those individuals would know that they are here legally. If you hired them otherwise, it would be at your own peril.

There are some technical reasons why Senator GRAHAM could not add that provision in here. It is going to require more money, No. 1, plus some other issues regarding the rules of this body. So I am hopeful that there are some additional measures we will take up after we, hopefully, adopt this amendment overwhelmingly, get this bill into conference, out of conference, and on the desk of the President.

So I applaud my colleague from South Carolina, as well as Senator PRYOR, who I know has worked very hard on this particular measure. This amendment does many of the things Senator ISAKSON and I have asked for, and we are very hopeful this will get to the desk of the President immediately. This will answer one of those questions a lot of us heard during the immigration debate from our constituents; that is, why don't you enforce the laws that are on the books today? Well, here is the answer: We do not have the money to do it. This will give us the money to do some of those things.

So I urge all of my colleagues to look very favorably on this amendment. Let's take the first right step to secure the borders. Then we can come back and deal with the overall remaining immigration issues that are outstanding.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, I ask unanimous consent that Senators LINCOLN, BAUCUS, and WEBB be added as cosponsors to this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from South Carolina.

Mr. GRAHAM. Mr. President, I think the Senator from New Hampshire and the Senator from Alabama would like to speak. We have until 11:35.

I ask the Senator from New Hampshire, would you like 5 minutes?

Mr. GREGG. Thank you.

Mr. GRAHAM. To be followed by the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama and the Senator from New Hampshire have a total of 7 minutes 40 seconds.

Mr. GRAHAM. Mr. President, I ask unanimous consent that it be evenly divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Hampshire.

Mr. GREGG. Mr. President, I congratulate the Senator from South Carolina for reaching this understanding on how to proceed relative to making sure our borders are secure.

The language in this amendment, which adds a significant amount of money to support the expansion of the boots on the ground and the technology on the border, is critical to the

first step—which has been related here by a number of individuals—of securing the border as part of our effort to get comprehensive immigration reform.

I think we all understand the American people are asking the question, Why isn't the border secure? This has been an effort that has been ongoing for a number of years now, to make the border secure. But this amendment we are taking up now would be the final downpayment on what is necessary to accomplish that goal.

We know what we need in order to secure the border. It is more border agents, it is more physical fencing but a lot more virtual fencing, it is more detention beds, and it is more ICE agents. It is also necessary to have in place the law these individuals need in order to enforce the border and pursue people who come into this country illegally and who may be inappropriately here and who are committing crimes here. Unfortunately, that language was not included in this amendment. That language was stripped out yesterday. But still, getting the resources in place in order to support the border is the first critical step, and this bill does that.

I have been working on this issue for a long time, both as past chairman of the Homeland Security Appropriations Subcommittee and as past chairman of the Commerce, State, Justice Appropriations Subcommittee in the Appropriations Committee, as have Senator COCHRAN and Senator BYRD. There has been a strong commitment on the part of the Appropriations Committee to accomplish these goals. But there has always been additional resources needed in order to fully fund border security. Now, with this amendment, we will actually put in place those additional resources.

I congratulate the Senator from South Carolina for bringing this process to closure. I congratulate the majority leader for reaching a consensus here that could be bipartisan. As Senator MCCONNELL said last night, this is a positive, bipartisan effort to try to step forward on one of the most critical issues we have as a nation, which is making sure the people who come into this country come into the country legally.

So it is the end of a long road, quite honestly, relative to the responsibility of Congress. We will now have put in place the necessary resources to secure the border. The question now becomes whether those resources will be effectively used. Certainly, we will have to use all our oversight capability to ensure that occurs, but at least we have addressed our responsibility of making sure the funds are there to support the necessary additional boots on the ground, the additional expansion of security along the border in the form of virtual fencing and in the form of physical fencing, and the additional detention beds necessary to make sure that when someone is apprehended for coming into the country illegally, they are not simply set off on their own recognizance to appear in court someday but are actually restrained in a place so they can be returned back to the nation they came from in an orderly manner, which is critical.

So this is a good bill and good language. I am glad we are making this progress on it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, the requirements of fencing, additional Border Patrol agents, bedspaces for those who have been detained who come here illegally are not there as an end in themselves. Our goal—our real goal—must be to create a change in the mindset of what is happening at the border, to reach that tipping point in which the world knows our borders are not wide open, that it is exceedingly difficult to penetrate them illegally and they are unlikely to be successful. As a result, we can move from the current situation—in which over a million people last year were arrested coming into our country illegally—and see those numbers drop off, to reach that tipping point, where the world knows that border is not open.

We have talked about it for all the 10 years since I have been in the Senate. Presidents have talked about it. They have campaigned on it. Members have talked about it. But we have not done anything about it. That is why the American people are not happy with us.

So I think this legislation will do some things of significance. It will fund 700 miles at the border and complete that process. Why it has taken as long as it has I am not sure, but work is being done right now, although not a lot has been accomplished so far. I am told that pretty soon we will see the fencing come up that we have authorized and that the work is continuing on. So it will be 700 miles. That is really progress, I have to say, but it is not the final installment. We are going to have to do more in the years to come. It is actual fencing, plus virtual fencing also.

So I am pleased we have made a concrete step forward with this funding. It will allow us, if the executive branch uses it wisely, to transform in a significant way the open border system we now have to a lawful system. That would be good for America in terms of creating a lawful system of immigration, and it will be good for the people who send us their money and expect us to do what we promise to do and that we actually get serious about it and start taking steps in that direction.

With regard to fencing, other countries use fencing significantly. Spain is constructing quite a lot of fencing on their African border. Other countries are doing so in the EU. Hong Kong has a border situation that they have dealt with through fencing. It is not anything unusual. It is the normal course when you have a wide open border because what happens is, a fence will multiply many times the effectiveness of a Border Patrol officer.

I ask my colleagues how you would be able to control hundreds of miles of border if you are just standing out there by yourself. If the person trying to come in knows they have to cross a fence, they will have a much harder time and be much easier to apprehend.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, I would like to pick up on some of the comments my colleagues on the Republican side have made on this amendment. One of the things Senator SESSIONS just mentioned is that this is a concrete proposal. I know he didn't intend the play on words, but this is concrete. We are talking about adding real border enforcement. It is real. It is bricks and mortar. It is physical barriers. It will definitely slow the influx of people coming into this country who are not playing by the rules.

Again, I want to thank my colleagues, both Democrats and Republicans. We have been adding cosponsors this morning to this legislation. I want to thank all of my colleagues who participated. I need to give a special thanks to Senator HARRY REID who helped pull this amendment together. To put $3 billion on border enforcement on the Homeland Security appropriations makes perfect sense. It makes perfect sense in terms of good government, and it makes perfect sense to the people all across this Nation.

One of the messages I heard loudly and clearly during the immigration debate which we finished a few weeks ago is, people want more border enforcement. They want the U.S. Government to secure our border. There is no doubt about that; this is something the Federal Government has failed to do or has been pretty lax in trying to do over the last several years. Again, this didn't start with the Bush administration. I think it has probably gotten worse during this time, but it goes back several administrations. I am not here to point fingers today.

By voting for this amendment today, Senators would add 23,000 additional full-time border agents. We would add new border monitoring technology. We would add 300 miles of vehicle barriers, 700 miles of fence, 105 radar and camera towers. We would add resources to detain 45,000 illegal immigrants.

So this is, as Senator SESSIONS said, a concrete step in the right direction. This is good public policy. I know we have broad bipartisan support for this legislation. I want to thank my colleagues for giving this strong consideration, and I ask that they look at this legislation before we vote in just a few minutes.

Before I sit down, I ask unanimous consent that Senator LANDRIEU and

Senator MCCASKILL be added as cosponsors to this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from South Carolina is recognized.

Mr. GRAHAM. Mr. President, I ask unanimous consent to add as cosponsors Senators ALEXANDER, DOLE, DOMENICI, and VITTER.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alabama is recognized.

Mr. SESSIONS. Would the Senator add me as a cosponsor?

Mr. GRAHAM. Absolutely. The Senator from Alabama, Mr. SESSIONS, and Senator COBURN from Oklahoma also.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM. Mr. President, I would like to thank my good friend from Arkansas. It has been a pleasure working with him and all of my colleagues. Senator GREGG has been working on this issue for many years. Senator CORNYN's addition to the amendment last night has made it far better. If no one else would like to speak——

Mr. PRYOR. Mr. President, I ask unanimous consent to add Senator FEINSTEIN as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

All time has expired.

The question is on agreeing to the Graham amendment No. 2480.

Mrs. MURRAY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. CONRAD), the Senator from Connecticut (Mr. DODD), the Senator from Hawaii (Mr. INOUYE), the Senator from South Dakota (Mr. JOHNSON), the Senator from Illinois (Mr. OBAMA), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

I further announce that, if present and voting, the Senator from North Dakota (Mr. CONRAD), and the Senator from Oregon (Mr. WYDEN) would each vote "yea."

Mr. LOTT. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from Minnesota (Mr. COLEMAN), and the Senator from Arizona (Mr. MCCAIN).

Further, if present and voting, the Senator from Minnesota (Mr. COLEMAN) would have voted "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 89, nays 1, as follows:

[Rollcall Vote No. 278 Leg.]

YEAS—89

Akaka	Domenici	McCaskill
Alexander	Dorgan	McConnell
Allard	Durbin	Menendez
Barrasso	Ensign	Mikulski
Baucus	Enzi	Murkowski
Bayh	Feingold	Murray
Bennett	Feinstein	Nelson (FL)
Biden	Graham	Nelson (NE)
Bingaman	Grassley	Pryor
Bond	Gregg	Reed
Boxer	Hagel	Reid
Brown	Harkin	Roberts
Bunning	Hatch	Rockefeller
Burr	Hutchison	Salazar
Byrd	Inhofe	Sanders
Cantwell	Isakson	Schumer
Cardin	Kennedy	Sessions
Carper	Kerry	Shelby
Casey	Klobuchar	Smith
Chambliss	Kohl	Snowe
Clinton	Kyl	Specter
Coburn	Landrieu	Stabenow
Cochran	Lautenberg	Sununu
Collins	Leahy	Tester
Corker	Levin	Thune
Cornyn	Lieberman	Vitter
Craig	Lincoln	Warner
Crapo	Lott	Webb
DeMint	Lugar	Whitehouse
Dole	Martinez	

NAYS—1

Voinovich

NOT VOTING—10

Brownback	Inouye	Stevens
Coleman	Johnson	Wyden
Conrad	McCain	
Dodd	Obama	

The amendment (No. 2480) was agreed to.

Mrs. MURRAY. Mr. President, I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. TESTER). The Senator from Vermont is recognized.

SUBPOENAS ISSUED

Mr. LEAHY. Mr. President, today the Senate Judiciary Committee is issuing subpoenas to political operatives at the White House for documents and testimony related to the committee's ongoing investigation into the mass firings of U.S. attorneys and the politicization of hiring and firing within the Department of Justice. This is not a step I take lightly. For over 4 months I have exhausted every avenue seeking the voluntary cooperation of Karl Rove and J. Scott Jennings but to no avail. They and the White House have stonewalled every request. Indeed, the White House is choosing to withhold documents and is instructing witnesses who are former officials—not current officials but former officials—to refuse to answer questions and provide relevant information and documents.

We have now reached a point where accumulated evidence shows that political considerations factored into the unprecedented firing of at least nine U.S. attorneys last year. Testimony and documents show that the list was compiled based on input from the highest political ranks in the White House, including Mr. Rove and Mr. Jennings. And today I will subpoena Mr. Rove and Mr. Jennings. The evidence shows that senior officials were apparently focused on the political impact of Federal prosecutions and whether Federal prosecutors were doing enough to bring partisan voter fraud and corruption cases. It is obvious that the reasons given for these firings were contrived as part of a coverup and that the stonewalling by the White House is part and parcel of that same effort. Just this week, during his sworn testimony, Mr. Gonzales contrasted these firings with the replacement of other U.S. attorneys for "legitimate cause."

The White House has asserted blanket claims of executive privilege, despite testimony under oath and on the record that the President was not involved. The White House refuses to provide a factual basis for its blanket claims. The White House has instructed former White House officials not to testify about what they know and instructed Harriet Miers to refuse even to appear as required by a House Judiciary Committee subpoena. The White House has withheld relevant documents and instructed other witnesses not to produce relevant documents to the Congress but only to the White House.

Last week, the White House did much to substantiate the evidence that it is intent on reducing U.S. attorneys and Federal law enforcement to merely another partisan political aspect of its efforts when it dispatched an anonymous senior official to take the position that the U.S. attorney for the District of Columbia would not be permitted to follow the statutory mechanism to test White House assertions of executive privilege by prosecuting contempt of Congress. In essence, this White House asserts its claim of privilege is the final word, that Congress may not review it, that no court can review it and that this White House, unlike any White House in history, is above the law.

Two days ago, during an oversight hearing with Mr. Gonzales, the senior Senator from Pennsylvania, the ranking Republican on the Senate Judiciary Committee, rightly asked:

> Mr. Attorney General, do you think constitutional government in the United States can survive if the President has unilateral authority to reject congressional inquiries on grounds of executive privilege and the President then acts to bar the Congress from getting a judicial determination as to whether that executive privilege is properly invoked?

There can be no more conclusive demonstration of this administration's partisan intervention in Federal law enforcement than if this administration were to instruct the Justice Department not to pursue congressional contempt citations and intervene to prevent a U.S. attorney from fulfilling his sworn constitutional duty. In other words, telling the U.S. attorney: Violate your oath of office; don't carry out your sworn constitutional duty to faithfully execute the laws and proceed pursuant to section 194 of title 2 of the United States Code. The President recently abused the pardon power to forestall Scooter Libby from ever serving a

(B) a comprehensive examination of the advantages and limitations of closed circuit television and, as appropriate, other public surveillance technologies;

(C) best practices on camera use and data storage;

(D) plans for coordination between the Federal Government and State and local governments, and the private sector—

(i) in the development and use of closed circuit television systems; and

(ii) for Federal assistance and support for State and local utilization of such systems;

(E) plans for pilot programs or other means of determining the real-world efficacy and limitations of closed circuit televisions systems;

(F) an assessment of privacy and civil liberties concerns raised by use of closed circuit television and other public surveillance systems, and guidelines to address such concerns; and

(G) an assessment of whether and how closed circuit television systems and other public surveillance systems are effectively utilized by other democratic countries in combating terrorism; and

(2) provide to the Committees on Homeland Security and Governmental Affairs, Appropriations, and the Judiciary of the Senate and the Committees on Homeland Security Appropriations, and the Judiciary of the House of Representatives a report that includes—

(A) the strategy required under paragraph (1);

(B) the status and findings of any pilot program involving closed circuit televisions or other public surveillance systems conducted by, in coordination with, or with the assistance of the Department of Homeland Security up to the time of the report; and

(C) the annual amount of funds used by the Department of Homeland Security, either directly by the Department or through grants to State, local, or tribal governments, to support closed circuit television and the public surveillance systems of the Department, since fiscal year 2004.

(b) CONSULTATION.—In preparing the strategy and report required under subsection (a), the Secretary of Homeland Security shall consult with the Attorney General, the Chief Privacy Officer of the Department of Homeland Security, and the Officer for Civil Rights and Civil Liberties of the Department of Homeland Security.

Mrs. MURRAY. Mr. President, I believe this amendment has been agreed to.

The PRESIDING OFFICER. Is there further debate on this amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 2513) was agreed to.

Mr. COCHRAN. I move to reconsider the vote by which the amendment was agreed to.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2502 TO AMENDMENT NO. 2383

(Purpose: To authorize the Secretary of Homeland Security to regulate the sale of ammonium nitrate to prevent and deter the acquisition of ammonium nitrate by terrorists, and for other purposes)

Mrs. MURRAY. Mr. President, I call up amendment No. 2502 and ask for its immediate consideration

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY], for Mr. PRYOR, proposes an amendment numbered 2502 to amendment No. 2383.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mrs. MURRAY. Mr. President, I believe this amendment has been agreed to on both sides.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 2502) was agreed to.

Mr. COCHRAN. I move to reconsider the vote by which the amendment was agreed to.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2514 TO AMENDMENT NO. 2383

Mrs. MURRAY. Mr. President, I call up amendment No. 2514 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY], for Ms. CANTWELL, proposes an amendment numbered 2514 to amendment No. 2383.

The amendment is as follows:

(Purpose: To prevent procurement of any additional major assets until completion of an Alternatives Analysis, and to prevent the use of funds contained in this act for procurement of a third National Security Cutter until completion of an Alternatives Analysis)

On page 22, beginning in line 17, strike "*Provided,*" and insert "*Provided,* That no funds shall be available for procurements related to the acquisition of additional major assets as part of the Integrated Deepwater Systems program not already under contract until an Alternatives Analysis has been completed by an independent qualified third party: *Provided further,* That no funds contained in this Act shall be available for procurement of the third National Security Cutter until an Alternatives Analysis has been completed by an independent qualified third party: *Provided further,*".

Mrs. MURRAY. I believe this amendment has been agreed to on both sides.

The PRESIDING OFFICER. Is there further debate on this amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 2514) was agreed to.

Mr. COCHRAN. I move to reconsider the vote by which the amendment was agreed to.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2391 TO AMENDMENT NO. 2383

Mrs. MURRAY. Mr. President, I call up amendment No. 2391 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY], for Ms. CANTWELL, proposes an amendment numbered 2391 to amendment No. 2383.

The amendment is as follows:

(Purpose: To require the Secretary of Homeland Security to develop a strategy and funding plan to implement the recommendations regarding the 2010 Vancouver Olympic and Paralympic Games in the Joint Explanatory Statement of the Committee of Conference on H.R. 5441 (109th Congress), the Department of Homeland Security Appropriations Act, 2007)

On page 69, after line 24, add the following:

SEC. 536. RISK MANAGEMENT AND ANALYSIS SPECIAL EVENT; 2010 VANCOUVER OLYMPIC AND PARALYMPIC GAMES.

As soon as practicable, but not later than 3 months after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Appropriations, the Committee on Homeland Security and Governmental Affairs, and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Appropriations, the Committee on Homeland Security, and the Committee on Transportation and Infrastructure of the House of Representatives a report regarding the plans of the Secretary of Homeland Security relating to—

(1) implementing the recommendations regarding the 2010 Vancouver Olympic and Paralympic Games in the Joint Explanatory Statement of the Committee of Conference on H.R. 5441 (109th Congress), the Department of Homeland Security Appropriations Act, 2007, with specific funding strategies for—

(A) the Multiagency Coordination Center; and

(B) communications exercises to validate communications pathways, test equipment, and support the training and familiarization of personnel on the operations of the different technologies used to support the 2010 Vancouver Olympic and Paralympic Games; and

(2) the feasibility of implementing a program to prescreen individuals traveling by rail between Vancouver, Canada and Seattle, Washington during the 2010 Vancouver Olympic and Paralympic Games, while those individuals are located in Vancouver, Canada, similar to the preclearance arrangements in effect in Vancouver, Canada for certain flights between the United States and Canada.

Mrs. MURRAY. I believe this amendment has been agreed to.

The PRESIDING OFFICER. Is there further debate on this amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 2391) was agreed to.

Mr. COCHRAN. I move to reconsider the vote.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2466 TO AMENDMENT NO. 2383

Mrs. MURRAY. Mr. President, I call up amendment No. 2466 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY], for Mrs. HUTCHISON, proposes an amendment numbered 2466 to amendment No. 2383.

The amendment is as follows:

AMENDMENT NO. 2466

(Purpose: To provide local officials and the Secretary of Homeland Security greater involvement in decisions regarding the location of border fencing)

At the appropriate place, insert the following:

SEC. ___. IMPROVEMENT OF BARRIERS AT BORDER.

Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended—

(1) in subsection (a), by striking "Attorney General, in consultation with the Commissioner of Immigration and Naturalization," and inserting "Secretary of Homeland Security"; and

(2) in subsection (b)—

(A) in the subsection heading, by striking "IN THE BORDER AREA" and inserting "ALONG THE BORDER";

(B) by redesignating paragraphs (1), (2), (3), and (4) as paragraphs (2), (3), (4), and (5), respectively;

(C) in paragraph (2), as redesignated—

(i) in the paragraph heading, by striking "SECURITY FEATURES" and inserting "ADDITIONAL FENCING ALONG SOUTHWEST BORDER"; and

(ii) by striking subparagraphs (A) through (C) and inserting the following:

"(A) REINFORCED FENCING.—In carrying out subsection (a), the Secretary of Homeland Security shall construct reinforced fencing along not less than 700 miles of the southwest border where fencing would be most practical and effective and provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border.

"(B) PRIORITY AREAS.—In carrying out this section, the Secretary of Homeland Security shall—

"(i) identify the 370 miles along the southwest border where fencing would be most practical and effective in deterring smugglers and aliens attempting to gain illegal entry into the United States; and

"(ii) not later than December 31, 2008, complete construction of reinforced fencing along the 370 miles identified under clause (i).

"(C) CONSULTATION.—

"(i) IN GENERAL.—In carrying out this section, the Secretary of Homeland Security shall consult with the Secretary of Interior, the Secretary of Agriculture, States, local governments, Indian tribes, and property owners in the United States to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such fencing is to be constructed.

"(ii) SAVINGS PROVISION.—Nothing in this subparagraph may be construed to—

"(I) create any right of action for a State, local government, or other person or entity affected by this subsection; or

"(II) affect the eminent domain laws of the United States or of any State.

"(D) LIMITATION ON REQUIREMENTS.—Notwithstanding subparagraph (A), nothing in this paragraph shall require the Secretary of Homeland Security to install fencing, physical barriers, roads, lighting, cameras, and sensors in a particular location along an international border of the United States, if the Secretary determines that the use or placement of such resources is not the most appropriate means to achieve and maintain operational control over the international border at such location."; and

(D) in paragraph (5), as redesignated, by striking "to carry out this subsection not to exceed $12,000,000" and inserting "such sums as may be necessary to carry out this subsection".

Mrs. MURRAY. Mr. President, I believe this amendment is also agreed to.

The PRESIDING OFFICER. Is there further debate on this amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 2466) was agreed to.

Mr. COCHRAN. I move to reconsider the vote.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2484 TO AMENDMENT NO. 2383

Mrs. MURRAY. Mr. President, I call up amendment No. 2484 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY], for Mr. GREGG, proposes an amendment numbered 2484 to amendment No. 2383.

The amendment is as follows:

(Purpose: To provide for greater accountability in grant and contract administration)

On page 69, after line 24, add the following:

SEC. 536. ACCOUNTABILITY IN GRANT AND CONTRACT ADMINISTRATION.

The Department of Homeland Security, through the Federal Emergency Management Agency, shall—

(1) consider implementation, through fair and open competition, of management, tracking and accountability systems to assist in managing grant allocations, distribution, expenditures, and asset tracking; and

(2) consider any efficiencies created through cooperative purchasing agreements.

Mrs. MURRAY. I believe this amendment is also agreed to.

The PRESIDING OFFICER. Is there further debate on this amendment?

If not, the question is on agreeing on the amendment.

The amendment (No. 2484) was agreed to.

Mr. COCHRAN. I move to reconsider the vote.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2486 TO AMENDMENT NO. 2383

Mrs. MURRAY. Mr. President, I call up amendment No. 2486 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY], for Ms. COLLINS, proposes an amendment numbered 2486 to amendment No. 2383.

The amendment is as follows:

(Purpose: To require an appropriate amount of funding for the Office of Bombing Prevention)

On page 30, line 17, before the period insert the following: "*Provided*, That $10,043,000 shall be for the Office of Bombing Prevention and not more than $26,100,000 shall be for the Next Generation Network".

Mrs. MURRAY. I believe this amendment has been agreed to.

The PRESIDING OFFICER. Is there further debate on this amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 2486) was agreed to.

Mr. COCHRAN. I move to reconsider the vote.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2497 TO AMENDMENT NO. 2383

Mrs. MURRAY. Mr. President, I call up amendment No. 2497 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY], for Mr. BYRD, proposes an amendment numbered 2497 to amendment No. 2383.

The amendment is as follows:

(Purpose: To establish a wild horse and burro adoption program at the Department of Homeland Security)

On page 69, after line 24, insert the following:

SEC. ___. None of the funds made available in this Act may be used to destroy or put out to pasture any horse or other equine belonging to the Federal Government that has become unfit for service, unless the trainer or handler is first given the option to take possession of the equine through an adoption program that has safeguards against slaughter and inhumane treatment.

Mrs. MURRAY. Mr. President, I believe this amendment has been agreed to.

The PRESIDING OFFICER. Is there further debate on this amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 2497) was agreed to.

Mr. COCHRAN. I move to reconsider the vote.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2404, AS MODIFIED, TO AMENDMENT NO. 2383

Mrs. MURRAY. Mr. President, I call up amendment No. 2404, with a modification, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY], for Mr. MARTINEZ, proposes an amendment numbered 2404, as modified, to amendment No. 2383.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. _____. INTERNATIONAL REGISTERED TRAVELER PROGRAM.

Section 7208(k)(3) of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1365b(k)(3)) is amended to read as follows:

"(3) INTERNATIONAL REGISTERED TRAVELER PROGRAM.—

"(A) IN GENERAL.—The Secretary of Homeland Security shall establish an international registered traveler program that incorporates available technologies, such as biometrics and e-passports, and security threat assessments to expedite the screening and processing of international travelers, including United States Citizens and residents,